

1 BEFORE THE
2 ILLINOIS COMMERCE COMMISSION
3
4 IN THE MATTER OF:)
5 COMMONWEALTH EDISON COMPANY,)
6) No. 05-0597
7 Proposed general increase in)
8 rates for delivery service.)
9 (Tariffs filed on)
10 August 31, 2005))

11 Chicago, Illinois
12 NOVEMBER 2, 2006

13 Met, pursuant to adjournment, at 9:00 a.m.

14 BEFORE:

15 MR. DOLAN and MS. HALOULOS,
16 Administrative Law Judges

17 APPEARANCES:

18 FOLEY & LARDNER, by
19 MR. E. GLENN RIPPKE,
20 MS. ANASTASIA M. POLEK-O'BRIEN,
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22 MR. JOHN RATNASWAMY
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 -and-

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30 EIMER, STAHL, KLEVORN & SOLBERG, by
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34 Appearing for Commonwealth Edison
35 Company;

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7 U.S. Energy Savings Corp.);

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20 Appearing for City of Chicago

21 MS. JULIE L. SODERNA
208 South LaSalle Street, Suite 1760
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5 MS. CARLA SCARSELLA
6 160 North LaSalle Street, Suite C-800
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10 MR. RISHI GARG
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14 Office

15 LUEDERS, ROBERTSON & KONZEN, by
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21 MR. CONRAD REDDICK
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Appearing for IIEC;

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Regional Commuter Railroad
Company, d/b/a Metra;

MR. BERNARD J. MURPHY, JR.
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Appearing for the Board of Education of
The City of Chicago.
Sullivan Reporting Company by
Steven T. Stefanik, CSR
Barbara Perkovich, CSR

1		<u>I</u>	<u>N</u>	<u>D</u>	<u>E</u>	<u>X</u>			
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u>	<u>Re-</u>	<u>By</u>			
3	BARRY MITCHELL	32	34	<u>direct</u>	<u>cross</u>	<u>Examiner</u>			
4	EDWARD BODMER	56	59	88					
5	PETER LAZARE	98	101						
6			106						
7			116						
8			121						
9			280	228	232				
10	KATHERINE M. HOUTSMA	235	237	241					
11									
12	JEROME P. HILL	244	247	250	277				
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1	<u>E X H I B I T S</u>		
2	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
3	ComEd		
	Nos. 51 and 58	32	34
4	52.0 & 59.0	235	237
	53 & 60		246
5	1		281
6	CUB/CC/SAO No. 7.0	56	
	CUB/CC/SAO No. 7.1	56	59
7			
	CCC Redirect No. 1	91	
8			
	Staff No. 27	98	100
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1 JUDGE DOLAN: All right. By the direction and
2 authority of the Illinois Commerce Commission, I
3 call Docket No. 05-0597, Commonwealth Edison
4 Company, proposed general increase in electric
5 rates, general restructuring of rates, price
6 unbundling, unbundling of bundled service rates,
7 revisions of other terms and conditions of service
8 on rehearing.

9 Would the parties please identify
10 themselves for the record.

11 MS. POLEK-O'BRIEN: For Commonwealth Edison
12 Company, Darryl M. Bradford, general counsel for
13 Commonwealth Edison Company; Richard Benet, Eugene
14 Bernstein, Anastasia Polek-O'Brien; David M. Stahl
15 of Eimer, Stahl, Klevorn and Solberg, Glenn Rippie
16 an Ratnuswamy of Foley and Lardner.

17 MR. JOLLY: On behalf of the City of Chicago,
18 Ronald D. Jolly and J. Mark Powell, 30 North
19 LaSalle, Suite 900, Chicago, Illinois 60602.

20 MR. FEELEY: Representing of the Illinois
21 Commerce Commission, John Feeley, Carmen Fosco,
22 Carla Scarsella, also general counsel, Illinois

1 Commerce Commission, 160 North LaSalle Street,
2 Suite C-800, Chicago, Illinois 60601.

3 MR. GARG: On behalf of the People of the State
4 of Illinois, Rishi Garg from the Office of the
5 Illinois Attorney General, 100 West Randolph,
6 Floor 11, Chicago, Illinois 60601.

7 MR. BALOUGH: Good morning. Richard C. Balough
8 appearing on behalf of the Chicago Transit
9 Authority, 53 West Jackson Boulevard, Suite 956,
10 Chicago, Illinois 60604.

11 MR. GOWER: Good morning. Edward Gower. I
12 represent Metra. Hinshaw and Culbertson, 100 South
13 April couple, Springfield, Illinois 62701.

14 MS. SODERNA: Julie Soderna appearing on behalf
15 of the Citizens Utility Board, 208 South LaSalle,
16 Suite 1760, Chicago, Illinois 60604.

17 MR. COOK: I'm Lot Cooke, United States
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20 MR. GOLDENBERG: On behalf of the Cook County
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1 Chicago, Illinois, 60602.

2 MR. MURPHY: On behalf of the Board of Education
3 City of Chicago, Bernard Murphy. Address, 125
4 South Clark Street, 7th Floor, Chicago 60603.

5 MR. REDDICK: Appearing on behalf of the
6 Illinois Industrial Energy Consumers, Eric
7 Robertson, Leuders, Robertson and Konzen, 1 -- 1939
8 Delmar Avenue, Granite City, Illinois, 60 -- 62040,
9 and Conrad R. Reddick, 1015 West Crest Street,
10 Wheaton, Illinois 60187.

11 MR. TOWNSEND: On behalf of the Coalition of
12 Energy Suppliers, the law firm of DLA Piper US,
13 LLP, by Christopher J. Townsend and William A.
14 Borders, 203 North LaSalle, Suite 1500, Chicago,
15 Illinois 60601.

16 JUDGE DOLAN: Are there any other appearances?
17 Let the record reflect that there are none.

18 Okay. Mr. Rippie, I believe, you want
19 to call your first witness?

20 MR. RIPPIE: Thank you, your Honors.

21 The Company's first witness is Mr. Barry
22 Mitchell. He's present and next to me.

1 There are other company witnesses
2 present in the room today, if you'd prefer to swear
3 them all in at once.

4 JUDGE DOLAN: I don't have a problem with that.
5 Okay. Do we want to --

6 MR. JOLLY: You want to do all witnesses who are
7 testifying today?

8 JUDGE DOLAN: All right. That's fine.
9 Raise your right hands.

10 (Witnesses sworn)

11 JUDGE DOLAN: Okay.
12 (Whereupon, ComEd
13 Exhibit Nos. 51 and 58 were
14 marked for identification
15 as of this date.)

16 BARRY MITCHELL,
17 called as a witness herein, having been first duly
18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION
20 BY
21 MR. RIPPIE:
22 Q. Good morning, Mr. Mitchell. Could you

1 please state and spell your name for the court
2 reporter.

3 **A.** My name is Barry Mitchell, B-a-r-r-y,
4 M-i-t-c-h-e-l-l.

5 **Q.** Mr. Mitchell, do you have before you two
6 documents, the first marked Commonwealth Edison
7 Exhibit No. 51 with two attachments, 51.1 and 51.2;
8 and the second, Commonwealth Edison Exhibit 58 with
9 two attachments, 58.1 and 58.2?

10 Exhibit 58 is an errata version marked
11 corrected.

12 **A.** I do.

13 **Q.** Are those respectively your direct and
14 rebuttal testimonies on rehearing prepared for
15 submission to the Commission in this docket?

16 **A.** They are.

17 **Q.** And if I were to ask you the same questions
18 that appear on those exhibits today, would you give
19 me the same answers?

20 **A.** I would.

21 **Q.** Do you have any additional corrections to
22 make to those documents today?

1 **A.** I do not.

2 MR. RIPPIE: Thank you very much.

3 I would move into evidence Exhibits 58.0
4 through 58.2 and 51.0 through 51.2 subject, of
5 course, to cross-examination.

6 JUDGE DOLAN: Any objections?

7 MR. JOLLY: No.

8 JUDGE DOLAN: All right. Then 51.0 through 51.2
9 and 58.0 through 58.2 will be admitted into the
10 record.

11 (Whereupon, ComEd
12 Exhibit Nos. 51 and 58 were
13 admitted into evidence as
14 of this date.)

15 JUDGE DOLAN: Proceed, Counsel.

16 CROSS-EXAMINATION

17 BY

18 MR. JOLLY:

19 **Q.** Good morning, Mr. Mitchell. I believe
20 we've met before; but for the record, my name is
21 Ron Jolly. I'm an attorney representing the City
22 of Chicago in this case.

1 **A.** Good morning.

2 **Q.** I'd like to start at Page 18, Lines 391

3 through 392 of your direct testimony.

4 **A.** What lines were they?

5 **Q.** It's 391 through 92.

6 **A.** Okay.

7 **Q.** And in that passage there, bottom of

8 Page 18 carrying over to the next page, you discuss

9 the return on equity in this case; is that correct?

10 **A.** Yes.

11 **Q.** And in the lines I cited there, you state

12 that the order simply ignored ComEd's estimate of

13 the course of common equity; is that correct?

14 **A.** Yes.

15 **Q.** And what was ComEd's proposed cost of

16 common equity in this case?

17 **A.** 11 percent.

18 **Q.** And that was presented by Dr. Hadaway

19 (phonetic)?

20 **A.** Yes.

21 **Q.** And are you familiar with the Commission's

22 July 26th order in this case?

1 **A.** Yes.

2 **Q.** Isn't it true that the Commission did not
3 ignore ComEd's proposed cost of common equity?

4 I'll just follow that up.

5 Isn't it true that the Commission, in
6 fact, expressly rejected ComEd's proposed cost of
7 common equity?

8 **A.** I stand by my statement. We look at it
9 with respect to how this was determined.

10 **Q.** How what was determined?

11 **A.** The 10.045.

12 **Q.** And -- well, I'm going to show you -- may I
13 approach the witness?

14 JUDGE DOLAN: Yes.

15 BY MR. JOLLY:

16 **Q.** I want to show you a portion of the
17 Commission's order which includes the Commission's
18 conclusion versus -- regarding the cost of common
19 equity. And I represent for the record that this
20 is the cover page of the Commission's July 26th
21 order, Pages 153 through 155.

22 And if you first could turn to Page 153.

1 Are you there?

2 **A.** Yes, I am.

3 **Q.** And isn't it true that in the third
4 paragraph following the heading Commission Analysis
5 and Conclusion, the Commission states, The parties
6 have raised three considerations that impact their
7 respective estimates. We turn first to those
8 issues.

9 Did I read that correctly?

10 **A.** Yes, you did.

11 **Q.** And in the next paragraph, it states, The
12 first is whether ComEd's use of GDP growth rates to
13 estimate long-term growth expectations of
14 individual companies in the DCF model improperly
15 overstates the model's results.

16 Did I read that correctly?

17 **A.** Yes.

18 **Q.** And if you turn over to the next page on
19 Page 154, in the second full paragraph, isn't it
20 true that the Commission stated that it finds that
21 the use of GDP growth rates to estimate long-term
22 growth leads to an improper and overstated estimate

1 of the cost of capital.

2 Did I read that correctly?

3 A. Yes, you read that correctly.

4 Q. And the last statement in that paragraph,
5 does the Commission not say, Accordingly, ComEd's
6 use of GDP growth rates is rejected?

7 A. Yes.

8 Q. So based on those -- the passages that I
9 just went over there, would you agree that the
10 Commission rejected ComEd's proposed cost of common
11 equity in this case?

12 A. It make statements with respect to certain
13 aspects of the methodology.

14 Q. Okay. And those statements say that
15 Dr. Hadaway's approach overestimates the estimate
16 of the proposed cost of common equity; is that
17 correct?

18 A. Well, it said -- you read the sentences
19 correctly.

20 Q. Okay. But you stand by your -- your
21 statement in your direct testimony at Page 19 that
22 the Commission simply ignored your estimate?

1 **A.** If parties have different positions, then
2 they have different rationale and methodology for
3 their positions.

4 And if, in fact, an average is taken of
5 certain of the proposed equity -- return on equity
6 positions, then to average some and not to include
7 ours is to ignore ComEd.

8 **Q.** Okay. Well, would you agree that similar
9 to the Commission's discussion of Dr. Hadaway's
10 approach, the Commission rejected Mr. Bodmer's
11 approach?

12 **A.** I don't recall.

13 **Q.** Well, if you look -- you can look at the
14 portion of the order there that I just showed you,
15 that if you go down on Page 154 to the fifth full
16 paragraph, says, The Commission agrees with ComEd
17 and Staff that for purposes of this case, the
18 problems inherent with the use of the investment
19 bank analysis outweigh their contribution to the
20 entire body of evidence.

21 Did I read that correctly?

22 **A.** I'm sorry. I didn't pick up the --

1 **Q.** Okay. It's actually -- if you look, it's
2 the second full paragraph from the bottom of the
3 page. Maybe that's easier. And then the
4 sentence -- the paragraph begins, The Commission
5 agrees with ComEd and Staff, on Page 154.

6 **A.** Oh, all right. Second full --

7 **Q.** Yes.

8 **A.** -- paragraph. I've got it.

9 **Q.** Okay. And it says, The Commission agrees
10 with ComEd and Staff that for purposes of this
11 case, the problems inherent with the use of the
12 investment bank analyses outweigh their
13 contribution to the entire body of evidence.

14 Did I read that correctly?

15 **A.** Yes.

16 **Q.** And it was Mr. Bodmer who proposed using an
17 investment bank analysis; is that right?

18 **A.** Yes.

19 **Q.** So would you agree that based on that
20 paragraph there, that the Commission rejected
21 Mr. Bodmer's proposal to use an investment bank
22 analysis to establish the -- the cost of common

1 equity?

2 **A.** Well, it doesn't say that it specifically
3 rejected it, but it said what it said. It
4 outweighs the contribution.

5 **Q.** Okay. Well, I guess, as I understand your
6 position on this issue that you're saying that
7 despite the Commission's finding that Dr. Hadaway's
8 use of the GDP growth rate overestimates the cost
9 of common equity, ComEd's proposal should
10 nonetheless be used in the average for determining
11 the cost of common equity.

12 Did I state that correctly?

13 **A.** To the extent that they used the
14 methodology that they did, yes.

15 **Q.** And the methodology that they used being an
16 average?

17 **A.** Yes.

18 **Q.** Okay. So would you agree that logic
19 dictates that because the Commission rejected or
20 found that Dr. -- or Mr. Bodmer's use of investment
21 bank analysis was not appropriate, that
22 Mr. Bodmer's proposed cost of common equity of 7.75

1 percent should also be included in that average?

2 **A.** Well, it really doesn't get at the issue
3 that the fundamental approach was flawed by taking
4 the average.

5 And we care, obviously, about our
6 position. We think it's correct. And just because
7 the order states that Dr. Hadaway's position,
8 methodology overstates the ROE relative to 11
9 percent doesn't mean it couldn't be ten and a half
10 percent or some other value.

11 **Q.** Well -- but, again, I'll ask my question
12 again.

13 Using that same logic, if you're going
14 to average -- include ComEd's proposal in the cost
15 of common equity, although the Commission found
16 problems with that proposal, doesn't logic dictate
17 that you would use Mr. Bodmer's approach also?

18 **A.** No, not at all. There's a difference
19 between their view that an approach would overstate
20 a position versus a fundamentally flawed
21 methodology.

22 **Q.** Well, I don't think that -- I don't think

1 the Commission said that it was a fundamentally
2 flawed methodology.

3 A. Well, that's -- that's my view. I'm
4 explaining -- I'm trying to answer your question.

5 Q. So you're explaining why it's appropriate
6 to include ComEd's proposal, flawed proposal as the
7 Commission found, but not use Mr. Bodmer's proposal
8 which the Commission also found to be flawed?

9 A. I don't believe the order used the term
10 "flawed" with respect to our proposal.

11 Q. Well, I think it used -- it stated that it
12 overstated the cost of common equity. Would you
13 consider that a flaw?

14 A. Not necessarily.

15 Q. Okay. I'll move on.

16 Would you turn to Page 16 of your direct
17 testimony, Lines 345 through 48. And there, you
18 refer to ComEd Exhibits 21.5 and 20-point -- 21.2.
19 Do you see that?

20 A. Yes.

21 Q. And as I understand it, ComEd Exhibit 21.5
22 includes Dr. Hadaway's sample group of utilities;

1 is that correct?

2 A. Yes.

3 Q. And Exhibit 21.2 is Staff's group of

4 utilities, sample group of utilities?

5 A. Yes.

6 Q. And are you familiar with those exhibits?

7 A. Yes.

8 Q. Do you have a copy of them? I have some

9 here and I can --

10 MR. RIPPIE: We've got it.

11 THE WITNESS: That would be helpful, if you

12 can --

13 MR. JOLLY: Okay.

14 THE WITNESS: Thank you.

15 BY MR. JOLLY:

16 Q. Have you had an opportunity to review

17 that -- those documents?

18 A. Yes.

19 Q. And do they -- do they show the utilities

20 in Mr. McNally's and Dr. Hadaway's respective

21 samples?

22 A. Yes.

1 **Q.** Do you know if any of the utilities in
2 Mr. McNally's sample in Exhibit 21.2, do you know
3 if any of those utilities were -- have recently
4 been involved in a merger?

5 **A.** Not that I recall.

6 **Q.** No?

7 How about with respect to the utility
8 sampling on Exhibit 21.5, Dr. Hadaway's utility
9 sample, are you --

10 **A.** Not that I recall.

11 **Q.** Oh, so for your answer --

12 **A.** I was looking at both.

13 **Q.** Oh, you were answering for both? Okay.

14 Okay.

15 If -- if any of those utilities were
16 involved in a merger, would it be fair to assume
17 that there would be good will created as a part of
18 the merger?

19 **A.** Certainly possible.

20 **Q.** Okay. Have you reviewed Mr. Bodmer's
21 responses to ComEd's data request on rehearing in
22 this case?

1 **A.** Do you mean his testimony?

2 **Q.** No, his responses to discovery requests

3 propounded by -- by ComEd.

4 **A.** I've -- I've seen all of them. I don't --

5 I don't specifically recall his responses.

6 **Q.** Okay. Do you know if he conducted an

7 analysis of the utilities in Dr. Hadaway's and

8 Mr. McNally's respective utility samples to

9 determine which of those utilities had -- have good

10 will in their balance sheets?

11 **A.** I don't know.

12 **Q.** Do you know if anybody in your staff looked

13 at that?

14 **A.** It's possible.

15 **Q.** But you know -- nobody made you familiar

16 with that or discussed that with you?

17 **A.** I recall some discussion about it, but,

18 frankly, there's -- there's a lot of testimony and

19 material and I don't remember every detail.

20 **Q.** Okay. I'd like to refer you to

21 Exhibit 51.1 attached to your direct testimony.

22 And that Exhibit 51.1 is the Moody's report that

1 you discuss in your testimony; is that correct?

2 **A.** Yes.

3 **Q.** And, in particular, I'd like to point you
4 to the third full paragraph that starts the -- that
5 states, The downgrade reflects the following.

6 Do you see that?

7 **A.** Yes.

8 **Q.** And then it enumerates three explanations
9 or reasons why Moody's downgraded ComEd securities;
10 is that correct?

11 **A.** Yes.

12 **Q.** Now, in the third item there, it states
13 that actions taken by management during the first
14 quarter 2006 to further separate ComEd from the
15 rest of its affiliates through the establishment of
16 a separate one-billion-dollar revolving credit
17 facility and the removal of ComEd from the Exelon
18 subsidiary money pool.

19 Did I read that correctly?

20 **A.** Yes.

21 **Q.** Do you know if Exelon took a similar action
22 with respect to PECO?

1 **A.** Yes, I do.

2 **Q.** And did they?

3 **A.** No.

4 **Q.** Do you know why they did not do that?

5 **A.** There was not the necessity.

6 **Q.** And what created the necessity for ComEd --

7 for Exelon to take that action with respect to

8 ComEd?

9 **A.** Well -- and I'd like to correct the one

10 statement.

11 ComEd took that action with respect to

12 itself. These steps were taken by ComEd --

13 **Q.** Okay.

14 **A.** -- because of the increased political and

15 regulatory pressures that ComEd was under in

16 Illinois and the need to protect itself and its

17 financial viability.

18 **Q.** Okay. I'd like to refer you to Page 15,

19 Line 310 of your direct testimony. And there,

20 you're wrapping up a discussion of Rider GCB.

21 **A.** Line 310?

22 **Q.** 310. Are you there?

1 **A.** I am.

2 **Q.** And there's a statement there that says,
3 The majority of this amount relates to the City of
4 Chicago.

5 Do you see that?

6 **A.** I do.

7 **Q.** And when you -- you're referring to this
8 amount, are you referring to the approximately
9 116 -- \$116 million shortfall identified by
10 Mr. Crumrine and Mr. Alongi in their testimony; is
11 that correct?

12 **A.** That's correct.

13 **Q.** And so I just want to understand what you
14 mean when you refer to the City of Chicago.

15 Are you suggesting that the City of
16 Chicago as a customer of ComEd is responsible for a
17 majority of that \$116 million?

18 **A.** Our view is that the appropriateness of the
19 recovery of those costs is apparently not an issue
20 and it was a matter of how those costs would be
21 recovered. And if, in fact, the position was not
22 changed with respect to this rider, a determination

1 would need to be made over which customers that
2 cost would be spread.

3 And the position here reflects the fact
4 that there should be a matching of the benefit that
5 accrues from the extension of that rate relative to
6 the customers, the underlying customers and where
7 they live and who would benefit from that.

8 **Q.** Are you aware -- do you know what entities
9 are eligible to take Rider GCB?

10 **A.** I know generally, but...

11 **Q.** Does that -- do those entities include the
12 Chicago Transit Authority?

13 **A.** I don't recall.

14 **Q.** Do you know if it includes the Chicago
15 School Board?

16 **A.** I don't recall.

17 **Q.** If they -- if the customers who are
18 eligible for Rider GCB do include those -- those
19 entities, were you lumping them in when you used
20 the phrase "City of Chicago" here?

21 **A.** Well, the significance are the ones that
22 are included rather than the ones that are excluded

1 and it doesn't change the point.

2 Q. If the Chicago Transit Authority is one of
3 the customers eligible to take Rider GCB, do you
4 know if -- if the CTA provides service outside the
5 City of Chicago?

6 A. I'm not specifically aware.

7 Q. Okay. Could you turn to your rebuttal
8 testimony at Page 4 and carrying over onto Page 5
9 and, particularly, beginning in the question that
10 begins at Line 73 carrying over to Page 5 there?

11 A. Yes.

12 Q. And there, you discuss a stipulation or a
13 package -- it's described in various ways -- agreed
14 to among ComEd, IIEC and the Department of Energy
15 that I -- is that accurate?

16 Is that an accurate characterization of
17 your testimony there?

18 A. Yes.

19 Q. I just want to -- I'm trying to understand
20 one statement there, and the statement begins at
21 Line 78 and it says, If the Commission were to
22 enter an order on rehearing reflecting all of the

1 elements of this package, IIEC, D.O.E. and ComEd
2 would accept that resolution and would not initiate
3 an appeal from it unless some other party
4 challenged the decision of one or more of those
5 issues.

6 Did I read that correctly?

7 **A.** Yes.

8 **Q.** And I guess I'm just trying to understand
9 exactly what is meant there.

10 Does it mean that if the City
11 appealed -- let's assume that the Commission
12 accepted your positions on all of these issues that
13 comprise the package that you put together.

14 Let's assume that the City appealed the
15 conclusion regarding capital structure to the
16 Appellate Courts. Does that mean that ComEd or
17 IIEC or the Department of Energy could then appeal
18 to the Appellate Courts their position with respect
19 to capital structure or any other -- any other
20 element of the package that you set forth in your
21 testimony?

22 **A.** This is presented as a package and, like

1 any other comparable circumstances, represents a
2 give-and-take compromise with respect to positions
3 on different issues.

4 So, therefore, if in fact these
5 positions were not accepted as a package, it would
6 leave us vulnerable to getting cherry-picked on
7 particular issues. Therefore, the sum total
8 result, the aggregate effect of this package is, in
9 fact, what we're willing to stipulate to, and we
10 would have to reserve our rights to the extent that
11 the circumstances as described in that sentence did
12 not occur.

13 **Q.** I guess what I'm trying to understand is
14 what -- what actions by other parties would have to
15 occur to cause you -- to cause you, ComEd, or IIEC
16 or D.O.E. to take an action to defend a position
17 other than -- other than those included in -- in
18 the package?

19 **A.** I guess I don't quite understand how to say
20 it other than the words that are here. And being
21 one of the three people in the room that probably
22 isn't an attorney, I don't want to give you a wrong

1 response and be wrong technically.

2 I'm trying to give you an honest answer
3 with respect to how we view this and why we're
4 submitting it.

5 Q. Okay. Well, perhaps, you know,
6 unfortunately, maybe you're the wrong person to
7 talk to about this, but you do invite other parties
8 to consider this package, is that correct, in your
9 testimony?

10 A. I mean it is what it is and we make the
11 stipulation on the package.

12 Q. Right.

13 A. And parties have to make their own
14 determination.

15 Q. Well, I understand. But, as I say, you do
16 suggest that other parties consider this package;
17 is that right?

18 A. Other parties have to do what they think is
19 the right thing. And it's there and we suggested
20 as presented in the testimony and I really don't
21 know what else to add.

22 Q. Okay. Well, I guess my point, though, is

1 that to fully -- to be able to fully consider and
2 understand the package, we have to know what the
3 package includes and does not include; is that --

4 **A.** Well, sure. I think it's clear as to what
5 it includes.

6 MR. JOLLY: Okay. Well, we may have to disagree
7 on that.

8 I have nothing further.

9 JUDGE DOLAN: Thank you.

10 MR. RIPPIE: There's no redirect for
11 Mr. Mitchell.

12 JUDGE DOLAN: No redirect. Okay. Thank you.

13 Mr. Soderna, did you have any questions?

14 MS. SODERNA: CUB does not have any cross for
15 this witness.

16 Thank you.

17 JUDGE DOLAN: You were listed for 15 minutes.
18 That's okay.

19 Okay. Then you're excused then,
20 Mr. Mitchell.

21 THE WITNESS: Thank you.

22 JUDGE DOLAN: Thank you. All right.

1 Mr. Bodmer, you ready then?

2 MR. JOLLY: Could I have a couple minutes.

3 JUDGE DOLAN: Sure. We'll go off the record.

4 (Discussion off the record.)

5 JUDGE DOLAN: All right. Back on the record.

6 MR. JOLLY: Thank you.

7 The Citizens Utility Board, the
8 Cook County State's Attorney Office and the City of
9 Chicago call Edward C. Bodmer.

10 (Whereupon, CUB/CC/SAO/City
11 Exhibit Nos. 7.0 and 7.1 were
12 marked for identification
13 as of this date.)

14 EDWARD C. BODMER,
15 called as a witness herein, having been first duly
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY

19 MR. JOLLY:

20 **Q.** Mr. Bodmer, could you please state your
21 name and business address for the record.

22 **A.** My name is Edward C. Bodmer. My address is

1 5951 Oakwood Drive, Lisle.

2 Q. And have you prepared direct testimony on
3 rehearing for submission in this case?

4 A. I have.

5 Q. And do you have before you the testimony
6 you submitted in this case which has been
7 identified for the record as a revised
8 CUB/CC/SAO/City Exhibit 7.0?

9 A. I do, yes.

10 Q. And was that document prepared by you or at
11 your direction?

12 A. It was.

13 Q. And if I were to answer -- or answer the
14 questions... If I were to ask you the questions in
15 revised CUB/CC/SAO/City Exhibit 7.0 today, would
16 your answers be the same?

17 A. Yes, they would.

18 Q. And does the exhibit also -- Exhibit 7.0
19 also include an attachment referred to as
20 CUB/CC/SAO/City Exhibit 7.01?

21 A. Yes, it does.

22 Q. And was that document prepared by you or at

1 your direction?

2 **A.** It was.

3 **Q.** Do you have any changes, modifications,
4 alterations to make to either Exhibits 7.0 or 7.01
5 at this time?

6 **A.** No.

7 MR. JOLLY: With that, I would move for the
8 admission of revised CUB/CC/SAO/City Exhibit 7.0
9 and 7.01 and tendered Mr. Bodmer for
10 cross-examination.

11 JUDGE DOLAN: Any objection?

12 MR. RIPPIE: Your Honor, with your permission
13 I'd like to reserve objection on the attachment on
14 7.01. I have no objection to the testimony.

15 JUDGE DOLAN: We'll note that.

16 With that then, revised CUB/Cook County
17 State's Attorney and City Exhibit 7.00 will be
18 admitted into the record, and we will reserve on
19 the Exhibit 7.01.

20

21

22

1 (Whereupon, CUB/CC/SAO
2 Exhibit No. 7.0 was
3 admitted into evidence as
4 of this date.)

5 CROSS-EXAMINATION

6 BY

7 MR. RIPPIE:

8 Q. Good morning, Mr. Bodmer.

9 A. Good morning.

10 Q. I'm not going to bother with the
11 introductions.

12 What member of the Exelon corporate
13 family is an Illinois public utility?

14 A. ComEd.

15 Q. Is there any other?

16 A. No.

17 Q. And would you agree that the Commission's
18 task on rehearing is to set retail electric service
19 rates for Commonwealth Edison Company?

20 A. I would.

21 Q. Would you agree that in so doing, ComEd is
22 entitled to a reasonable opportunity to earn a just

1 and reasonable rate of return on its rate base?

2 A. Yes.

3 Q. And would you agree that it is entitled to
4 that opportunity without regard to its affiliation
5 with unregulated or nonutility companies?

6 A. In theory, I would, yes.

7 Q. In fact, is it entitled to that
8 opportunity?

9 A. The reason I stated "in theory" was -- was
10 in reference to the ComEd testimony that mentions
11 things like bond ratings, things like the
12 residential rate cut, all the --

13 Q. I haven't asked you about ComEd's
14 testimony. I'm simply asking about your views on
15 how the Commission should be guided in doing the
16 task that three questions ago you and I agreed was
17 before it.

18 In fact, Mr. Bodmer, would you agree
19 that ComEd is entitled to a reasonable opportunity
20 to earn a just and reasonable return on its rate
21 base without regard to its affiliation with
22 unregulated nonutility companies?

1 **A.** I think as part of the question you just
2 asked, you asked how it should be guided in setting
3 that return.

4 I think it should be guided by the
5 principles you mentioned which exclude all these
6 relationships with the parent including the actions
7 it took to reduce its bond rating, so...

8 **Q.** So is the answer to my question yes?

9 **A.** Yes, as I originally said.

10 **Q.** And would you also agree that in
11 determining a reasonable rate of return on
12 investment for a public utility like ComEd, the
13 Commission should not include any incremental risk
14 which is the direct or indirect result of such an
15 affiliation?

16 **A.** Yes.

17 **Q.** Whether that risk benefits the utility or
18 hurts it, right?

19 **A.** Yes.

20 **Q.** Is it your recommendation to the Commission
21 that it alter ComEd's rates from what they
22 otherwise would be, depending upon the

1 profitability of the Exelon Corporation?

2 **A.** As long as those rates do not -- are not
3 affected by things such as the bond ratings or the
4 historic rate reductions and so forth, yes.

5 **Q.** Okay. Let me then break this down.

6 We spent a few minutes establishing in
7 general a procedure that the Commission ought to
8 follow for setting ComEd's rates, right?

9 **A.** Yeah.

10 **Q.** Should it change its result at the end of
11 that procedure based on Exelon's profitability?

12 **A.** No.

13 **Q.** And if prices in the federally-regulated
14 wholesale electricity market were to drop markedly
15 and ExGen -- Exelon Generation, LLC, which I'll
16 call ExGen (phonetic) -- were to fail to recover
17 its operating costs as a result, would you
18 recommend that the Commission increase ComEd's
19 rates to compensate Exelon Corporation for that
20 loss?

21 **A.** Could you define in that question the
22 phrase "federally regulated"?

1 Are you implying that these are -- these
2 rates are regulated based on return on investment
3 or --

4 **Q.** I don't think I used the word "rate." I
5 said the federally-regulated wholesale market.

6 **A.** Uh-huh.

7 **Q.** All -- all I was implying there is, without
8 trying to be legal, that the wholesale electricity
9 market is regulated by FERC. You know that, right?

10 **A.** It's regulated -- it's not price-regulated.

11 **Q.** Do you want me to read the question again?

12 **A.** So the question would be -- the answer
13 would be the same as my other responses, that
14 distribution and delivery portion of the rates
15 should not be changed as a function of the
16 profitability of Exelon Generation, no.

17 **Q.** And also, the supply portion of the retail
18 rate shouldn't be changed to allow Exelon to make
19 up for that loss, should it?

20 **A.** I don't know if I really should get into
21 the whole subject of how the supply rate should be
22 set.

1 **Q.** Are you familiar with the tariffs ComEd's
2 filed in this case?

3 **A.** The delivery service tariffs?

4 **Q.** That's your qualification, not mine. I
5 just said, Are you familiar with the tariffs.

6 **A.** I'm familiar with them, yes.

7 **Q.** And they're bundled service tariffs, aren't
8 they?

9 **A.** No.

10 **Q.** Have you read DESR (phonetic)?

11 **A.** I mean, the portion I read and the rates
12 that are set, set the recovery of the costs of
13 service for distribution under the tariffs.

14 **Q.** So it's your position today that an
15 analysis of the supply prices is outside the scope
16 of your testimony?

17 **A.** Yes.

18 **Q.** Now, you used the phrase ComEd/Exelon at
19 several places in the text of your testimony and
20 also throughout 7.01, which we can -- we'll call
21 the Exelon study. Is that an okay shorthand?

22 **A.** Yes.

1 **Q.** Okay. When you use that phrase, you mean
2 more than Commonwealth Edison Company itself,
3 right?

4 **A.** Again, in reviewing the stock prices, for
5 example, that occurred -- that were in existence at
6 the time the Act was passed, there were -- the
7 stock price consisted of more than ComEd, yes. It
8 had some other minor subsidiaries.

9 **Q.** Fair enough. That was not quite my
10 question.

11 I'm simply asking you when you make a
12 variety of statements, not limited to stock price
13 statements, with reference to an entity you
14 describe as ComEd/Exelon, you're referring to an
15 entity that's substantially broader than just
16 Commonwealth Edison Company, right?

17 **A.** I think in the report, I made -- when I did
18 combine Unicom or ComEd, it was in reference to the
19 stock price.

20 **Q.** Well, on, let's say, Line 153 of your
21 testimony, you talk about an analysis of total
22 return to ComEd/Exelon investors from '97 through

1 early '06. And by that, you mean someone who
2 purchased an investment in the predecessor of
3 Exelon in '97 and held it through early '06, right?

4 A. I'm not on the same line number. We
5 apparently have a different version of the
6 testimony, but I --

7 Q. Okay. It's the --

8 A. I agree with that statement.

9 Q. It's the paragraph numbered 2 --

10 MR. JOLLY: Okay. We're in a different --

11 MR. RIPPIE: -- in the description of
12 Exhibit 7.01.

13 The joys of trying to print from
14 electronic versions.

15 MR. JOLLY: Well, I think you don't have the
16 revised version.

17 MR. RIPPIE: I thought -- I don't? Well, okay.

18 BY MR. RIPPIE:

19 Q. You agree with the conclusion?

20 MR. JOLLY: Let him turn to the --

21 THE WITNESS: Yes.

22 MR. RIPPIE: Sure. Of course.

1 THE WITNESS: Yes.

2 BY MR. RIPPKE:

3 Q. And the returns involved arise not only
4 from the operations of ComEd, but from the
5 operations of all the other entities owned by
6 Exelon Corporation directly or indirectly during
7 that nine-year period of time?

8 A. Yes, they do.

9 Q. And you acknowledge in the study attached
10 at 7.01 a variety of other factors that were
11 included. And I'm going to direct your attention
12 to what I think is Page 10 of that -- that
13 attachment and I hope I've got that right.

14 And the factors that you identify that
15 might affect those conclusions expressed in your
16 study include PECO's retail electric revenues,
17 right?

18 A. The reference on Page 10 refers to the
19 forward-looking analysis; but, in general, these
20 same -- these same factors would have driven the
21 historic returns as well, yes.

22 Q. Fair enough. Okay. You know what, instead

1 of asking you each one, I'm just going to rip
2 through a list and ask you at the end whether all
3 of those things are ones that you've identified
4 that would have affected those conclusions.

5 PECO's retail electric revenues, PECO's
6 retail electric costs, PECO's retail gas revenues,
7 PECO's retail gas costs, Exelon Generation
8 wholesale revenues, Exelon Generation fuel costs,
9 Exelon Generation purchase power, other Exelon
10 Generation costs, Exelon corporate overhead, Exelon
11 debt costs, Exelon financing and taxes, and other
12 Exelon capital expenditures, right?

13 **A.** Yes.

14 **Q.** And similar things would have applied if
15 Exelon had owned any other subsidiary during that
16 period of time?

17 **A.** Yes.

18 **Q.** Now, you claim on Page 1 of that study that
19 Exelon does not need a rate increase to stay
20 healthy. It's the paragraph that you numbered 3.

21 **A.** I see that.

22 **Q.** You see that?

1 **A.** Yes.

2 **Q.** Now, the Study 7.01 does not isolate
3 Commonwealth Edison's costs, investments or
4 revenues, does it?

5 **A.** No, it does not.

6 **Q.** Is it fair to say that there is no
7 discussion in your testimony or the study of how
8 Commonwealth Edison's current or test year costs
9 compared to its revenues?

10 **A.** There's a discussion about PECO relative to
11 ComEd. However, in the specific question you asked
12 about ComEd, the current distribution company is
13 ComEd's test year expenses. No, that's not
14 referred to at all in the study.

15 **Q.** And is it also true that nothing in your
16 testimony contends that any asset transfer, power
17 sale or other transaction between ComEd and any of
18 its affiliates occurred at anything other than
19 authorized terms?

20 **A.** That issue wasn't addressed.

21 **Q.** Do you understand the difference between
22 corporate debt and equity?

1 **A.** I understand the difference between debt
2 and equity. Corporate, did you have any particular
3 definition of corporate debt?

4 **Q.** No, I'm not asking you about a home
5 mortgage or a loan for a car. I'm asking you
6 about, do you understand the difference in a
7 corporation's capital structure of -- between debt
8 and equity?

9 **A.** Yeah, the debt obviously, it's a variety of
10 different types of debt.

11 **Q.** Understand.

12 **A.** Good.

13 **Q.** But regardless of the types, they're
14 usually reflected or they are reflected in a bond
15 or a note or another instrument that sets out terms
16 of repayment, right?

17 **A.** Yes.

18 **Q.** And along with debt comes a right to earn
19 interest?

20 **A.** Yes.

21 **Q.** And the interest is specified in the bond
22 note or term -- bond note or indenture underlying

1 the debt?

2 **A.** In that contract, yes.

3 **Q.** In the corporate context.

4 **A.** Yes.

5 **Q.** And while common equity holders may get

6 dividends in a varying amount, depending upon the

7 company's performance, debt typically repays its

8 lenders without regard to the company's performance

9 at least so long as it stays out of bankruptcy,

10 right?

11 **A.** As long as it hasn't defaulted, yes.

12 **Q.** Debt holders stand in line in the payment

13 order ahead of equity holders, right?

14 **A.** Hm-hmm.

15 **Q.** Did I hit most of the criteria in your mind

16 that distinguish the holder of equity from the

17 holders of debtor or did I miss any?

18 **A.** I think the current classic definition

19 of -- that distinguish -- that -- the way you've

20 distinguished debt and equity would be debt is a

21 kind of a sold put option and equity has the other

22 option characteristics. So that equity's downside

1 to a certain extent is limited and it has the
2 upside as long as the value of the firm is greater
3 than the value of the debt.

4 Q. Okay. Now, keeping in mind those criteria
5 that we ticked off, there's a bond or a note.
6 There's a fixed interest rate. There's an absolute
7 right to earn unless the company, of course,
8 defaults. They stand in line ahead of the equity
9 holders.

10 Does your testimony indicate that any
11 portion of the \$803 million capital contribution
12 Exelon made to ComEd qualifies under any of those
13 criteria as debt?

14 A. Could you refer me to the testimony where I
15 state it was debt? I'm sorry.

16 Q. Well, you make an argument that it should
17 be deemed as essentially an equivalent to debt and
18 I'm simply asking --

19 A. Can you point me to that statement? I
20 don't recall making that statement.

21 Q. You're going to have to give me a minute.

22 For example, on Page 2 on Lines 46

1 through, oh, let's say, 59, you talk about capital
2 structure of the company assuming that the 803
3 million is booked as debt. You describe it -- that
4 debt booking as, quote, financial alchemy used to
5 reclassify debt as equity.

6 I'm inquiring into the basis of that
7 testimony. I can find other examples, Mr. Bodmer,
8 but...

9 **A.** Just to clarify, when I made the
10 adjustment, I removed the 802 (sic) million from
11 the asset side and liability side. I did not -- I
12 did not in any of the statistics, in any of the
13 capital structure ratios --

14 **Q.** Reclassify?

15 **A.** -- reclassify the debt at the -- at the
16 subsidiary company, at ComEd, from debt to equity.
17 And those statements refer to the fact that the
18 debt actually was issued at Exelon Corporation.

19 So from a standpoint of an investor, an
20 equity investor who holds a share of Exelon, that,
21 in fact, is debt. They issue -- Exelon Company or
22 Exelon Corporation, in fact, issued the debt.

1 That's what those references refer to.

2 Q. Okay. And maybe you've saved me about a
3 page. To ComEd, it's equity?

4 There's no note. There's no fixed
5 interest rate. There's no right to repayment in
6 advance of other equity holders. None of those
7 criteria that we talked about apply from ComEd's
8 perspective to this 803 million, do they?

9 A. ComEd booked it on its balance sheet as
10 equity and I'm not suggesting that ComEd's
11 accounting for the 803 million is inappropriate.
12 All relates to the rate making treatment.

13 Q. Now, you testify at Line 253 and following.
14 And I apologize. I may have written this before
15 the renumbering occurred.

16 A. That's fine.

17 Q. It's the quotation that some of the
18 companies in Dr. Hadaway's sample and the Staff's
19 sample had previously been engaged in mergers?

20 A. Yes.

21 Q. Now, your testimony says that there may be
22 good will as a result of those transactions; is

1 that fair?

2 **A.** I'm sorry. I'm still finding it.

3 **Q.** No problem. Take your time.

4 MR. JOLLY: Since you have the revised version,
5 it appears at Page 12, Lines 262 between --

6 THE WITNESS: It -- indeed, the -- the testimony
7 states these companies may have large amounts of
8 good will on the books.

9 In fact, it really should have read --
10 read some of these companies do have large amounts
11 of good will on their books.

12 BY MR. RIPPIE:

13 **Q.** Now, the companies there are almost all
14 holding companies, aren't they?

15 **A.** They're generally holding companies of gas
16 distribution -- of regulated gas distribution and
17 regulated electricity delivery service companies,
18 generally, yes.

19 **Q.** And they also have unregulated subsidiaries
20 in many cases, right?

21 **A.** I think when Dr. Hadaway did his analysis,
22 he attempted in developing his criteria to select

1 companies that had relatively small unregulated
2 operations; but they do, yes.

3 Q. Good will can arise in the books of a
4 holding company in a variety of ways, right?

5 A. No.

6 Q. Well, it could arise because of a holding
7 company merger transaction?

8 A. It arises because in a transaction, the
9 equity paid for the transaction exceeds the fair
10 market value of the assets after transaction costs.

11 Q. It could also arise because any of the
12 subsidiaries, regulated or unregulated, transferred
13 assets at a value other than book, right?

14 A. Are you talking about in the context of an
15 acquisition where a company was purchased for more
16 than the fair market value of assets? That's where
17 the good will arises.

18 Q. It doesn't have to be the whole company,
19 right?

20 A. But it's in the context of a merger
21 transaction.

22 Q. Or a purchase or sale of assets of any of

1 the subsidiaries of the holding company?

2 I didn't think this would be the hard
3 question.

4 **A.** I'm not familiar with just -- if you want
5 to classify a merger, as long as it's a merger and
6 acquisition of another company, you're just
7 transferring and restructuring assets. And I don't
8 know -- I don't believe good will would be recorded
9 in that context.

10 **Q.** Well, will you agree with me that the
11 appropriate rate-making treatment of any good will
12 carried on the books of such a company is a
13 question for the state regulatory Commissions
14 dealing with those utilities to address?

15 **A.** No.

16 **Q.** Okay. So is it fair to say then you
17 haven't investigated how the various state
18 regulatory Commissions responsible for all the
19 utilities owned by those holding companies have
20 treated for capital structure purposes those good
21 will entries that your testimony says may exist?

22 **A.** The reason I am --

1 **Q.** I'm not asking you for the reason. I'm
2 asking you whether you've investigated it.

3 **A.** Well, my experience tells me that the
4 overwhelming majority of Commissions set rate base
5 according to the original cost and would exclude
6 good will in the capital structure.

7 **Q.** Do you know whether there is any utility
8 subsidiary of any of those companies that you
9 testified may and subsequently conclude do have
10 good will on their holding company's books has a
11 capital structure in their last rate case with less
12 than 40 percent equity?

13 **A.** I haven't -- I haven't looked at the rate
14 cases, no.

15 **Q.** Is it true that you haven't investigated
16 what the approved capital structures of those
17 operating utilities are at all?

18 **A.** The issue had -- that I raised had nothing
19 to do with what Commissions approved. It was -- it
20 was referring to the study of what actual capital
21 structures were that Mr. Mitchell quoted. So I
22 haven't. The answer is no.

1 **Q.** So you don't know how the regulatory
2 Commissions in any of the states that deal with
3 those utilities addressed the good will that you
4 identify?

5 **A.** That's an entirely different question. I
6 know that.

7 For example, I work on Energy East and I
8 know the Commission specifically -- at least the
9 main Commission specifically excludes good will
10 from the capital structure.

11 **Q.** Okay. Do you know whether it's accurate
12 that Central Maine's (phonetic) last approved
13 capital structure had 47 percent equity in it,
14 notwithstanding the exclusion of the good will?

15 **A.** I don't believe it was that high.

16 **Q.** Okay. Now, in your testimony, you identify
17 certain changes that have occurred since your
18 pre-rehearing testimony. It's the introductory
19 question.

20 They include changes in ComEd's capital
21 structure and changes in other companies that you
22 discuss in the testimony; is that right?

1 **A.** Yes.

2 **Q.** And you calculate a ComEd capital structure
3 for June 30, 2006 and December 31 of 2005 near the
4 beginning of your testimony; is that correct?

5 **A.** Yes, it is.

6 **Q.** And the change that you identified in that
7 case reveals that ComEd's leverage had decreased
8 during that period, right?

9 **A.** The equity-to-capital structure, the equity
10 ratio has gone up from 33.7 percent to 34.7
11 percent.

12 **Q.** Or for ComEd's, without making the second
13 adjustment you make, your table entitled ComEd
14 Capital Structure with Equity Funding from Exelon
15 shows it's gone up from 41.2 to 41.8?

16 **A.** Yes.

17 **Q.** A second change you talk about is something
18 that's happened out east with the Constellation and
19 Florida Power and Light proposed merger, right?

20 **A.** I quoted some of the investment banks
21 that -- that have -- have estimated the cost of
22 capital in that merger, yes.

1 **Q.** Neither ComEd nor Exelon was a party to
2 that transaction, right?

3 **A.** No.

4 **Q.** But would you agree that Constellation,
5 Florida Power and Light and Exelon all operate in
6 the same capital market?

7 **A.** Yes.

8 **Q.** Do you know whether the investment banks
9 reports that you quote purport to in any way
10 estimate the required return on equity for discount
11 rates applicable to Exelon or ComEd?

12 **A.** They don't.

13 **Q.** Do you know whether -- well, first of all,
14 Constellation's utility subsidiary is Baltimore Gas
15 and Electric, right?

16 **A.** Yes.

17 **Q.** And Florida Power and Light is -- has a
18 utility subsidiary that bears essentially the same
19 name, Florida Power and Light, right?

20 **A.** I think the holding company's named FPL.

21 **Q.** Right. And utility's Florida Power and
22 Light.

1 Do you know whether either of those
2 entities had rate cases pending during the time of
3 the merger?

4 **A.** I don't know that, no.

5 **Q.** Do you know whether either the Public
6 Utility Commission of Maryland or Florida has based
7 the allowed returns on equity for those two
8 utilities in whole or in part on analyses like you
9 present here?

10 **A.** I just said I don't even know that
11 they're -- they have rate cases pending.

12 **Q.** I'm told that I may have either misphrased
13 a question or you may have misphrased an answer, so
14 I'm going to, with Mr. Jolly's indulgence, reask a
15 question so the record's clear.

16 One of the things you presented in your
17 testimony was investment bank reports relating to a
18 merger that -- which reports weren't available to
19 you at the time of your original testimony, right?

20 I called it a change.

21 **A.** The date of the report was June 23rd, 2006.
22 So that's correct, yes.

1 **Q.** And ComEd -- neither ComEd nor Exelon were
2 involved in that transaction in any way --

3 **A.** Yes.

4 **Q.** -- is that correct?

5 **A.** That's correct.

6 **Q.** They were not involved?

7 **A.** Correct. They were not.

8 **Q.** Okay. Are you aware of any other material
9 changes that occurred between your previous
10 testimony and this testimony that might alter
11 ComEd's appropriately allowed cost of equity?

12 **A.** I've reviewed treasury bond rates.

13 **Q.** And there's a late chart in your --

14 **A.** Chart. And I think that doesn't affect the
15 cost significantly. So I don't know of any,
16 offhand.

17 **Q.** Well, let's try just one.

18 When you originally testified, ComEd had
19 what business profile score?

20 **A.** We were discussing the Standard and Poors.

21 **Q.** Correct. The S&P Business Profile score.
22 It was a four, right?

1 **A.** I believe it was a four.

2 **Q.** And is it still a four?

3 **A.** Well, you know, I've -- I've reviewed
4 Mr. McNally's testimony and your rebuttal testimony
5 and, apparently, it has increased to an eight.

6 However, I entirely agree with
7 Mr. McNally's testimony on this subject that the
8 change in the business score comes from events and
9 circumstances that are unrelated to this -- to the
10 delivery service portion of this case.

11 So I wouldn't think that's a relevant
12 issue.

13 **Q.** Whether you've saved me three questions or
14 added three, I don't know; but your answer is, yes,
15 it's now eight?

16 **A.** Yes, it is now eight.

17 **Q.** And eight's at the high end of the risk
18 profiles for electric utilities?

19 **A.** Yes, it is.

20 **Q.** And isn't it a fact that you told the
21 Commission in your direct testimony that the higher
22 the business risk of the utility, quote, the higher

1 the rate of return required to induce investors to
2 make investments?

3 It's Lines 409 through 411.

4 **A.** I'm sure I said that. There are some
5 caveats, however, but I'll stop.

6 **Q.** Now, with respect to your lengthy answer to
7 my question about business profile eight, if
8 Commonwealth Edison were successful in eliminating
9 all its procurement risk and S&P were to lower it
10 to a business profile two, you think it should be
11 still allowed the rate of return appropriate to a
12 BP-4 company?

13 **A.** I think in estimating the cost of equity
14 for a regulated delivery service company without
15 any stock price, the methods that all of the
16 witnesses used didn't use any market information
17 for -- from ComEd. I suspect it probably wouldn't
18 have changed the recommendations very much.

19 All of the recommendations were based on
20 comparable companies with similar business risks.
21 And we have -- we have this task to estimate the
22 cost of -- that -- the cost of equity when we don't

1 have market information on a particular company.

2 **Q.** If ComEd were successful in eliminating all
3 of its procurement risk and, as a result, became a
4 business profile two company, should it still get
5 the higher rate of return associated with a BP-4
6 delivery company?

7 **A.** I guess I'm saying that the rate of return
8 that I recommended and my understanding of the rate
9 of return that all of the other witnesses
10 recommended did not directly have anything to do
11 with the business profile score of four or two.

12 **Q.** So -- well, let me ask the question this
13 way:

14 Is it your recommendation to the
15 Commission that in setting the rate of return, that
16 it only consider the business risk associated with
17 the delivery function regardless of the whole
18 company business risk?

19 **A.** In this particular context, the answer
20 would be, yes, and that is because the -- once --
21 once the delivery rates are in place and once the
22 actual cost of capital occurs for ComEd, presumably

1 January 1, 2007, then all of the procurement risks
2 would be resolved and the company over the tenure
3 of the rates would have a profile that reflects
4 delivery-service-only risks, yes.

5 Q. And that's true regardless of whether the
6 whole company risk is greater or lesser than the
7 isolated delivery risk, right? It's symmetric.

8 A. Well, that's -- that's why I was careful in
9 answering the question.

10 The structure of the procurement risk in
11 this particular case at 1/1/2007 is such that --
12 it's such that they're virtually -- I'm not saying
13 absolutely, but virtually no supply risks for the
14 company during the tenure of the rates.

15 Q. So it's your view that there is no risk
16 that the legislature will pass anything affecting
17 ComEd's supply risk after 1/1/07?

18 A. That's not what I said.

19 Q. Is it also your view that there'll be any
20 appeals relevant to the procurement case after
21 1/1/07?

22 A. That's not my position.

1 **Q.** Okay. Then let me try one last time with
2 the general question and we'll be done.

3 Is it your testimony in general that in
4 setting ComEd's rates, the Commission should
5 consider an ROE appropriate for the business risk
6 profile of the delivery function only or the
7 business risk profile of ComEd as a whole?

8 **A.** I said in the context of this case, it
9 would be the delivery service only.

10 MR. RIPPIE: Thank only. Thanks.

11 That's all I have.

12 MR. JOLLY: Can we have a couple minute.

13 (Discussion off the record.)

14 JUDGE DOLAN: We're back on the record.

15 MR. JOLLY: I just have two last questions.

16 REDIRECT EXAMINATION

17 BY

18 MR. JOLLY:

19 **Q.** The first has to do with the attachment to
20 your testimony, Exhibit 7.01. And Mr. Rippie asked
21 you several questions about that cite.

22 Why did you attach that study to your

1 direct testimony?

2 **A.** I think, as I stated in the -- in my
3 testimony, my reading of Mr. Mitchell's testimony
4 in this case was that a significant fact in ComEd's
5 requirement for a rate increase on rehearing was
6 not only the formulas that set the rate of return
7 and the cost of service and so forth, but that from
8 a financial integrity standpoint, it needs a --
9 this rate increase because of pressure on the bond
10 ratings.

11 And by introducing financial integrity
12 and, more specifically, financial integrity issues
13 that are the result of its relationship with its
14 parent company, the whole context of -- of the
15 financial integrity should be reviewed, including
16 the equity returns that investors in its holding
17 companies have -- in its parent company have
18 earned.

19 **Q.** Mr. Rippie also asked you some questions
20 regarding an answer that appears at the bottom of
21 Page 12 in your revised testimony. I understand it
22 appears elsewhere, but the questions had to do with

1 Dr. Hadaway's sample and Staff's sample.

2 Are you there, Glenn?

3 MR. RIPPKE: Thank you.

4 BY MR. JOLLY:

5 Q. And in your testimony there, you state that
6 some -- some of the companies in Dr. Hadaway's
7 sample and the Staff's sample had previously been
8 in mergers and Mr. Rippke asked you some questions
9 regarding that statement.

10 Subsequent to the filing of your -- of
11 your direct testimony in this case, have you had an
12 opportunity to investigate which of those companies
13 in Mr. McNally's sample and Dr. Hadaway's sample
14 have been involved in mergers and which have good
15 will on their books?

16 A. Yes, I have. I researched each of the
17 companies in the sample and found the balance sheet
18 for each of the companies and investigated what the
19 equity to capital would be if you would have
20 removed the good will from the equity -- equity
21 balance and recomputed the equity to capital ratio.

22 Q. And was that provided to

1 Commonwealth Edison as part of a data response?

2 **A.** It was.

3 **Q.** Okay. I'd like to have marked as an
4 exhibit what I'll call CCC Redirect Examination on
5 Rehearing No. 1.

6 (Whereupon, CCC Redirect
7 Exhibit No. 1 was
8 marked for identification
9 as of this date.)

10 MR. JOLLY: The response is ComEd-CCC-R-2.12.
11 There's one extra copy.

12 BY MR. JOLLY:

13 **Q.** Now, the -- what's been marked as CCC
14 Redirect Exhibit on Rehearing 1, is this the
15 response that includes the analysis you just
16 discussed?

17 **A.** Yes, it is.

18 **Q.** And what does that analysis show?

19 MR. RIPPKE: I object to this line of
20 questioning. It's beyond the scope of cross.

21 This data request response was provided
22 to us at a time when Mr. Mitchell could not respond

1 just simply because of timing. I'm not suggesting
2 it was late. As a result, I was very careful not
3 to ask Mr. Bodmer about this feature of the
4 analysis.

5 I asked him specifically how the
6 regulatory Commissions treated the capital
7 structures. I didn't ask him what any of the
8 capital structures were. I didn't walk him through
9 the list of utilities, in part, because he
10 testified that he didn't know what the regulatorily
11 approved capital structures were; but, regardless,
12 I didn't ask questions about this.

13 This is an attempt to get into the
14 record evidence that we haven't had an opportunity
15 to respond to in testimony. It's beyond the scope
16 of my cross.

17 MR. JOLLY: Well, the -- the question that is
18 part of the response refers to the specific
19 testimony and lines of testimony that Mr. Rippie
20 did ask about. And then also, in his response,
21 Mr. Bodmer indicated that he had done an analysis
22 to look at the actual capital structures.

1 And given that Mr. Bodmer did include
2 that in his response, I think we're allowed to
3 follow up with -- it's part of his
4 cross-examination. It was part of his answer. If
5 Mr. Rippie believed that that portion of his answer
6 was not responsive, he should have moved to strike
7 it. He didn't. So now, it's part of his
8 cross-examination.

9 And now, I'm asking Mr. Bodmer to just
10 to explain the analyses -- the analysis he did.

11 MR. RIPPIE: Regardless of whether I could have
12 or should have moved to strike, I'm allowed to
13 assume that something didn't matter and not bother
14 making motions to strike. That doesn't bootstrap
15 the entire issue into redirect.

16 I did not ask him about this question on
17 cross. I asked him about how the regulatory
18 Commissions treated the capital structures of the
19 underlying utilities. This is beyond the scope of
20 that, substantially.

21 MR. JOLLY: And, again, it's within the scope of
22 his answer.

1 JUDGE DOLAN: I think I'm going to have to
2 sustain the objection because I do -- I think it is
3 beyond what he testified to previously, so...

4 MR. JOLLY: Okay.

5 Nothing further.

6 JUDGE DOLAN: Any redirect -- I mean, recross?

7 MR. RIPPKE: No, your Honor.

8 JUDGE DOLAN: All right. Thank you, Mr. Bodmer.

9 MR. RIPPKE: I do have an objection to 7.01.
10 The -- whatever subject of motive the witness may
11 have had to include it, it doesn't talk about
12 ComEd's costs, ComEd's revenues, ComEd's
13 profitability, and it certainly -- it contains no
14 information about any of the financial
15 characteristics of the company during the test year
16 which drive -- the adjusted test year which drive
17 the appropriate determination of the rate.

18 The profitability of Exelon Corporation
19 as a whole is not relevant to Mr. Bodmer's
20 testimony.

21 JUDGE DOLAN: You want to respond?

22 MR. JOLLY: Yes. I would respond rather than

1 repeat what Mr. Bodmer said, which I'm not certain
2 if I could do, but I would, in addition, say that
3 Commonwealth Edison has had this testimony since
4 October 16.

5 They could have filed a motion to
6 strike. IIEC was able to file a motion to strike
7 Mr. Merrill's testimony and had a portion of that
8 stricken. It was taken care of. And they could
9 have done that prior to waiting until hearing to do
10 this. So I think it's unfair at this point for
11 ComEd to move to strike this.

12 MR. RIPPKE: Well, let me very briefly just say
13 two things.

14 The entire first line of my
15 cross-examination dealt with the relevance of this
16 document and that's why I asked to reserve
17 objection. I didn't -- I thought I knew what
18 Mr. Bodmer's answers were going to be, but one can
19 never be sure. And that is the substantial
20 foundation.

21 This -- this is not a motion to strike
22 based on there's some technical defect in it. I'm

1 basing this motion in large part on answers that he
2 gave during his cross-examination about the scope
3 and meaning of this study.

4 It's a relevance objection. It's not,
5 for example, expressing a legal opinion or is in
6 some other way legally defective.

7 MR. JOLLY: Well, I guess I would point out with
8 respect to that that Mr. Mitchell in his rebuttal
9 testimony says that the attachment is irrelevant.

10 So it doesn't seem like this was some
11 conclusion that Mr. Rippie came to during the
12 course of this cross-examination. ComEd made that
13 very argument in Mr. Mitchell's rebuttal testimony.

14 And, again, to wait until now to move to
15 strike it when he had an opportunity to do it, to
16 give us more -- a more fair opportunity to respond,
17 I think, would have been the proper course.

18 MR. RIPPIE: Your Honors, if you're concerned
19 about the timing -- and I understand Mr. Jolly's
20 statement -- we have no problem with this being
21 reserved and doing it in writing and giving the
22 City and CCC as much time as they think they need

1 to respond to this.

2 JUDGE DOLAN: All right. Why don't we do that.

3 We'll reserve ruling on it, so...

4 MR. JOLLY: So ComEd will file a motion?

5 MR. RIPPIE: Or you can take my argument as a

6 motion and you file a response and we'll file a

7 reply, whatever the --

8 MR. JOLLY: Okay. Well.

9 MR. RIPPIE: -- the Judges prefer.

10 MR. JOLLY: We obviously have to wait until the

11 transcript --

12 MR. RIPPIE: You'll get that today or tomorrow.

13 MR. JOLLY: Okay. All right.

14 JUDGE DOLAN: All right. That's fine. We'll

15 reserve judgment on that.

16 All right. So you want to go with

17 Mr. Staff.

18 MR. FOSCO: Yes, Staff would call Mr. Lazare.

19 JUDGE DOLAN: Okay.

20 (Recess taken.)

21 JUDGE DOLAN: All right. Why don't we go ahead

22 and get back on the record.

1 MR. FOSCO: Your Honor, Staff would call
2 Mr. Lazare.

3 JUDGE DOLAN: Please go ahead. Proceed.

4 (Whereupon, Staff
5 Exhibit No. 27 was
6 marked for identification
7 as of this date.)

8 PETER LAZARE,
9 called as a witness herein, having been first duly
10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY

13 MR. FOSCO:

14 Q. Would you please state your name for the
15 record and spell your last name?

16 A. Peter Lazare, L-a-z-a-r-e.

17 Q. Mr. Lazare, did you cause testimony to be
18 prepared on rehearing in this proceeding?

19 A. Yes.

20 Q. Okay. And you have in front of you what
21 has been marked as ICC Staff Exhibit 27.0,
22 corrected?

1 **A.** Yes.

2 **Q.** Okay. And does that consist of 21 pages of
3 questions and answers?

4 **A.** Yes.

5 **Q.** All right. Was this document prepared by
6 you or under your direction -- direction and
7 control?

8 **A.** Yes.

9 **Q.** And if I were to ask you the questions set
10 forth in this document today, would your answers be
11 as set forth therein?

12 **A.** Yes.

13 **Q.** Okay. Do you have any corrections or
14 modifications?

15 **A.** I had one correction to the original that
16 was made in the corrected version.

17 **Q.** Okay.

18 **A.** And that's --

19 **Q.** Go on. I'm sorry.

20 **A.** That's on Page 10, Line 240. I incorrectly
21 typed "rejected" on that line when it should be
22 "reflected."

1 **Q.** Okay. And that correction is contained in
2 the corrected document that was filed on eDocket
3 November 1st?

4 **A.** Yes.

5 MR. FOSCO: Your Honor, we would move for
6 admission of ICC Staff Exhibit 27.0, corrected, and
7 tender Mr. Lazare for cross-examination.

8 JUDGE DOLAN: Any objections?

9 MR. POWELL: No objection.

10 MR. STAHL: No.

11 JUDGE DOLAN: All right. Then Staff
12 Exhibit 27.0 will be admitted into the record.

13 (Whereupon, Staff
14 Exhibit No. 27 was
15 admitted into evidence as
16 of this date.)

17 MR. FOSCO: And, your Honor, just for
18 clarification, Mr. Lazare testifies about a number
19 of topics. Mr. Feeley is going to be handling
20 Mr. Lazare when the questions concerning Rider GCB
21 and I'll be handling the other questions.

22 JUDGE DOLAN: Okay. Thank you.

1 Mr. Powell?

2 CROSS-EXAMINATION

3 BY

4 MR. POWELL:

5 Q. Good morning, Mr. Lazare. My name is Mark
6 Powell. I represent the City of Chicago in this
7 matter and I have just a very few questions for you
8 all relating to Rider GCB.

9 And in your corrected direct testimony
10 on rehearing at Page 19, Lines 447 through 50, you
11 recommend that the Commission approve ComEd's
12 proposal to replace Rider GCB with Rider GCB-7; is
13 that correct?

14 A. That is Staff's recommendation that was
15 originally made in the previous part of this case.

16 Q. Okay. You're not offering a legal opinion
17 that ComEd should not comply with the Commission's
18 July 26th order requiring ComEd so retain
19 Rider GCB; is that correct?

20 A. That's correct.

21 Q. So would you agree that if after rehearing
22 is concluded that order stands, ComEd should comply

1 with the law regardless of the magnitude of any
2 associated revenue shortfall?

3 **A.** If -- if it requires compliance with the
4 law, yes.

5 **Q.** I'd like to turn your attention to Pages 19
6 and 20 of your corrected direct testimony on
7 rehearing.

8 There, you discuss ComEd's three
9 proposals for recovering a revenue shortfall
10 associated with retaining Rider GCB; is that
11 correct?

12 **A.** Yes.

13 **Q.** And on Page 20, Lines 466 through 68, you
14 state your opinion that the most reasonable
15 alternative is to recover the shortfall from,
16 quote, the ratepayers who derive benefits from the
17 governmental bodies receiving the subsidized rates,
18 close quote.

19 Did I read that correctly?

20 **A.** Yes.

21 **Q.** You go on to state at Lines 468 through 70
22 that, quote, for Chicago or Cook County

1 governmental agencies taking service under
2 Rider GCB, that would include all residential,
3 commercial and industrial ratepayers within the
4 city or county, close quote.

5 Did I read that correctly?

6 **A.** Yes.

7 **Q.** What kind of benefits would, in your
8 opinion, justify recovering any revenue shortfall
9 associated with the rate -- with Rider GCB from
10 particular customers or classes of customers?

11 **A.** I'm sorry. From which customers?

12 **Q.** From a -- any particular class of customers
13 such as those within the city or those -- any
14 particular customers or class of customers that...

15 **A.** To the extent that, you know, governments
16 are supported by the taxpayers of a municipality,
17 municipality or that government, if the
18 government's electric costs were to decline, that
19 could be perceived as a benefit to the taxpayers
20 because their support for that government could --
21 would then not have to be as great as in the
22 alternative.

1 So, therefore, I think we regard it as a
2 benefit to taxpayers indirectly and, therefore,
3 there would be a basis to recover the shortfall for
4 from those taxpayers.

5 **Q.** Would you agree that receiving municipal
6 services such as water service, sanitation, fire,
7 that kind of thing, would justify recovering any
8 revenue shortfall from the customers who received
9 those services?

10 **A.** I'm not clear on your question. Could you
11 restate it.

12 **Q.** Would you agree with me that municipal
13 services constitute benefits that justify
14 recovering any shortfall from the customers who
15 receive those services.

16 **A.** Well, the benefits would justify the
17 payment of taxes or however those, you know,
18 benefits are paid for. Sometimes it might, you
19 know, pay for the service directly.

20 So it would be an indication that
21 taxpayers do benefit from these governmental
22 entities. And so that's why, if you have this

1 issue of recovery of shortfall, the most logical
2 basis would be to recover from the taxpayers who
3 benefited from the services provided by the
4 government.

5 Q. Would you agree that people and entities
6 located outside of the City of Chicago, for
7 example, that is those who are not Chicago
8 taxpayers, may benefit from services provided by
9 the City?

10 A. That's certainly possible.

11 Q. So, for example, you'd agree with me that
12 people and entities located outside the City of
13 Chicago may use O'Hare and/or Midway Airports?

14 A. Yes.

15 Q. And some people and entities located
16 outside of Chicago receive water service from the
17 City?

18 A. Yes.

19 MR. POWELL: Okay. I have nothing further.

20 Thank you.

21 JUDGE DOLAN: Any redirect on that?

22 MR. FEELEY: No.

1 JUDGE DOLAN: Okay. All right.

2 MR. TOWNSEND: Thank you, your Honors.

3 JUDGE DOLAN: Go ahead, Mr. Townsend.

4 CROSS-EXAMINATION

5 BY

6 MR. TOWNSEND:

7 Q. Chris Townsend appearing on behalf of the

8 Coalition of Energy Suppliers.

9 Good morning, Mr. Lazare.

10 A. Good morning.

11 Q. What is functionalization?

12 A. It's a process of utilities -- of taking --

13 basically breaking down costs into the different

14 functions provided that the utility performs.

15 Q. You're familiar with ComEd's prior delivery

16 services rate case proceedings, correct?

17 A. Yes.

18 Q. And prior to the instant proceeding,

19 ComEd's most recent delivery services rate case was

20 conducted under Illinois Commerce Commission Docket

21 No. 01-0423, correct?

22 A. Yes.

1 **Q.** Is it all right if we call that proceeding
2 the ComEd 2001 rate case?

3 **A.** That's fine.

4 **Q.** You're familiar with the final order in
5 ComEd's 2001 rate case as it relates to the issue
6 of functionalization?

7 **A.** I can't, sitting here -- my familiarity has
8 declined with the passage of time. So I don't know
9 if I'm familiar enough for the purpose of your
10 question.

11 **Q.** Well, you do cite to that in your testimony
12 on rehearing, correct?

13 **A.** Could you give me a --

14 **Q.** Sure. In Footnote 2, for example -- I'm
15 sorry. That refers back to a portion of your
16 testimony. Line 54, if you will, specifically
17 refers to the decision in 01-0423.

18 **A.** The specific -- I was looking at the
19 footnote and stuff.

20 **Q.** I'm sorry. There's probably a clearer
21 reference up in the text in the answer.

22 **A.** Okay. There's certainly reference to the

1 text, yes.

2 Q. And it's actually Footnote 1 that has the
3 actual citation of the -- of the order, right?

4 A. Yes.

5 Q. And you're generally familiar with the
6 functionalization issues as they were addressed in
7 that case, correct?

8 A. Yes.

9 Q. And in ComEd's 2001 rate case, the
10 Commission approved the allocation of general and
11 intangible plant to ComEd's production or supply
12 function, correct?

13 A. Yes.

14 Q. And do you recall what that amount was?

15 A. The amount that was approved, I think, was
16 somewhere over \$400 million.

17 Q. And that position in the Commission's final
18 order was consistent with Staff's position in the
19 2001 rate case?

20 A. Yes.

21 Q. In developing your testimony for this
22 proceeding, did you assume that the Commission's

1 decision regarding functionalization in the 2001
2 rate case was appropriate?

3 **A.** For -- for the plant that it had addressed,
4 yes.

5 **Q.** I'm sorry. For the plant?

6 **A.** For the plant that was addressed in the
7 01-0423 rate case, I assume that was an appropriate
8 decision.

9 **Q.** And why did you make that assumption?

10 **A.** Well, that -- that goes back to my
11 testimony in that case which was a basis for the
12 Commission's decision.

13 Since the Commission accepted my
14 position, you know, since I agree with my position,
15 I thought it was appropriate.

16 **Q.** In your testimony, you recognize that there
17 are three different functions to which costs may be
18 assigned, correct?

19 **A.** Yes.

20 **Q.** Those are the transmission function, the
21 distribution function, and production function;
22 correct?

1 **A.** Yes.

2 **Q.** When you use the term "production
3 function," are you referring to ComEd's
4 supply-related function?

5 **A.** Well, that depends on which case you're
6 talking about. In the 01-0423, the answer is yes.

7 In the current case, I'm talking about
8 the supply function which is almost in its
9 entirety, I think, is entirely now owned by Exelon
10 Generation. And, actually, some of those plants
11 that formed the basis for the functionalization in
12 01-0423 are now owned by Midwest Generation.

13 **Q.** But ComEd does still perform a procurement
14 function, correct?

15 **A.** Yes.

16 **Q.** And would the procurement function fall
17 underneath the term "production function"?

18 **A.** I don't think that they're synonymous.

19 **Q.** I didn't mean did they line up a hundred
20 percent. But as opposed to putting it underneath
21 the transmission function or distribution function,
22 would it be appropriate to -- let me withdraw that

1 question. We'll get back to that.

2 Would you agree that the costs and
3 expenses associated with ComEd's transmission
4 function should be recovered from customers who
5 take transmission service from ComEd?

6 **A.** Yes.

7 **Q.** Would you agree that the costs and expenses
8 associated with ComEd's distribution function
9 should be recovered from customers who take
10 distribution service from ComEd?

11 **A.** Yes.

12 **Q.** And would you agree that the costs and
13 expenses associated with ComEd's procurement
14 function should be recovered from customers who
15 take procurement service from ComEd?

16 **A.** Yes.

17 **Q.** Why is it important for the procurement
18 costs and expenses to be recovered from ComEd's
19 procurement customers rather than its delivery
20 services customers?

21 **A.** It's -- goes back to a long-standing
22 Commission rate-making principle of basing rates on

1 costs. Costs of supply are not a cost for
2 delivery-service-only customers, so...

3 Q. Would you refer to that as cost causation
4 principles?

5 A. Yes.

6 Q. You understand that ComEd presently
7 procures power for its supply customers, correct?

8 A. Yes.

9 Q. And ComEd does have supply customers; that
10 is, it provides supply to its bundled service
11 customers, correct?

12 A. It buys power for them, yes.

13 Q. You further understand that even following
14 the mandatory transition period, ComEd is going to
15 continue to procure power for its supply customers,
16 right?

17 A. Yes.

18 Q. And the method by which ComEd will procure
19 that power was approved by the Commission in ICC
20 Docket 05-0159, correct?

21 A. Yes.

22 Q. And we can call that the procurement

1 proceeding; is that all right?

2 **A.** That's fine.

3 **Q.** And it was Staff's position in the initial
4 phase of this proceeding that the costs associated
5 with the ComEd procurement proceeding should be
6 recovered from ComEd's supply customers, correct?

7 **A.** Yes.

8 **Q.** And the Commission in its final order in
9 the instant proceeding agreed that the costs
10 associated with the ComEd procurement proceeding
11 should be recovered from ComEd's supply customers,
12 correct?

13 **A.** Yes.

14 **Q.** Why were those costs associated with the
15 procurement proceeding properly attributed to
16 ComEd's supply function?

17 **A.** Because it's solely related to procuring
18 power and energy for bundled customers.

19 **Q.** And would you agree that following the end
20 of the mandatory transition period, ComEd will
21 continue to incur costs in actually performing the
22 procurement service?

1 **A.** That's what the company says.

2 **Q.** And you agree with that?

3 **A.** Yes.

4 **Q.** And procurement costs include not only

5 future regulatory costs, but also day-to-day supply

6 procurement costs, correct?

7 **A.** I think the specific costs will -- you

8 know, I don't want to sort of make a prejudgement

9 on exactly what specific costs they'll incur, but,

10 you know, I'd like to wait for the final -- you

11 know, I know they'll have costs associated with the

12 supply and, for example, regulatory.

13 It depends on whether there are -- when

14 they come in before the Commission again, whether

15 there actually are regulatory expenses incurred

16 associated with performing that supply. And I

17 don't want to sort of say beforehand that, yes,

18 this will necessarily happen, you know. You have

19 to wait to see what they come in with.

20 **Q.** Well, there are going to be ongoing

21 proceedings with regards to the procurement of

22 power for bundled customers, correct?

1 **A.** Yes.

2 **Q.** And so you would anticipate with regards to
3 those proceedings, that ComEd would incur
4 additional regulatory costs, correct?

5 **A.** Yes.

6 **Q.** And in addition to those costs, ComEd
7 actually has to manage that supply, correct?

8 **A.** Yes.

9 **Q.** And so there will be day-to-day supply
10 costs as well, correct?

11 **A.** Yes.

12 **Q.** And would you agree that ComEd's
13 procurement costs should continue to be recovered
14 from ComEd's supply customers?

15 **A.** Yes.

16 **Q.** And would you agree that the supply
17 administration charge, or SAC, is a mechanism that
18 ComEd uses to recover its procurement costs?

19 **A.** Yes.

20 **Q.** And would you agree that Staff does not
21 oppose ComEd recovering prudently incurred
22 supply-related costs?

1 **A.** That's correct.

2 **Q.** Would it be fair to say that Staff does not

3 oppose recovery of prudently incurred

4 supply-related costs, but, rather, just opposes

5 recovery of such supply costs through delivery

6 services charges?

7 **A.** Yes.

8 MR. TOWNSEND: No further questions.

9 Thank you.

10 JUDGE DOLAN: Any redirect?

11 MR. FOSCO: No, your Honor.

12 JUDGE DOLAN: Okay. Thank you.

13 Mr. Balough, you just made it.

14 MR. BALOUGH: Timing sometimes is everything.

15 JUDGE DOLAN: I take it ComEd wants to go last.

16 MR. STAHL: That's correct, yes.

17 JUDGE DOLAN: Okay.

18 CROSS-EXAMINATION

19 BY

20 MR. BALOUGH:

21 **Q.** Good morning, Mr. Lazare. My name is

22 Richard Balough and we've met before. I have a

1 couple questions about your testimony.

2 And, in particular, on Page 20 of your
3 testimony where you're discussing Rider GCB -- are
4 you with me?

5 A. Yes.

6 Q. And on -- starting on Lines 466 and going
7 into 467, you say that the most reasonable of the
8 alternatives to collect any subsidy, if one exists,
9 should be from those receiving for (sic) the
10 ratepayers who derive benefits from the
11 governmental bodies receiving the subsidized rates.

12 Can you tell me what type of benefits do
13 you mean?

14 A. Well, if they -- whatever services the
15 government provides, the recipients of those
16 services would be receiving benefits from the
17 government in terms of those services, you know,
18 whether -- police protection, fire protection.
19 CTA, you know, the transportation service, things
20 of that sort.

21 Q. Okay. So if, for example, there are riders
22 of the CTA who live in Lake County, would they

1 be -- would they be deriving benefits from the CTA?

2 A. Yes.

3 Q. And, likewise, riders of the CTA who live
4 in Will County, they would be deriving benefits?

5 A. Yes.

6 Q. In your testimony, you only mention Chicago
7 or Cook County.

8 Are you aware that some of the GCB
9 customers potentially could -- excuse me. That
10 some of the GCB entities could be in Lake County as
11 well?

12 A. I'm not specifically familiar with where
13 they might, you know, exist.

14 Q. Is your proposal that, for example -- that
15 the company should determine the amount -- and I'm
16 going to use their term -- subsidy, although
17 probably CHA doesn't agree with that, but let's --
18 the subsidy, for example, if it were a subsidy for
19 the City of Chicago, that the City of Chicago
20 residents should pay that particular subsidy?

21 A. Yes.

22 Q. And if, for example, there is a Cook County

1 subsidy, that all the residents of Cook County
2 should pay that portion of the subsidy?

3 **A.** Yes.

4 **Q.** So, for example, someone living in Skokie,
5 they would pay the Cook County portion of the
6 subsidy, but not the City of Chicago portion of the
7 subsidy?

8 **A.** Yes.

9 **Q.** Okay. So you're trying to slice it by
10 particular entity and whether -- and calculate it
11 on an entity-by-entity basis and have ComEd just
12 charge those customers -- or excuse me, those
13 residents in those particular jurisdictions?

14 **A.** Yes.

15 **Q.** And, again, if there are riders of the CTA
16 in Will County, then all the persons in Will County
17 would be paying the CTA portion?

18 **A.** Well, for each governmental entity, you
19 would have to sort of make a decision about, you
20 know, where the lion's share of the benefits may
21 exist.

22 And if -- if there were some riders in

1 Will County who derived benefits, but it was
2 relatively small, well, then you'd have to make a
3 decision about if it was primarily for Cook County
4 or primarily for the City of Chicago. You have to
5 basically decide for each entity which is the best
6 fit.

7 And it's like any aspect of rate making.
8 You're never going to get an exact relationship
9 between the benefits to each ratepayer and, you
10 know, the setting of rates for those ratepayers.
11 There's always certain averaging that goes on.

12 So if some people in Will County benefit
13 from the CTA, you'd have to decide whether or not
14 that reaches a sufficient threshold to charge all
15 of Will County for the subsidy associated with
16 Rider GCB for the CTA.

17 **Q.** And would you agree with me that some of
18 the benefits that you get from mass transit is not
19 necessarily the person who is riding the mass
20 transit facility, but it's also a regional benefit
21 because it's taking cars off the road so that
22 others can be on the road?

1 **A.** Yes, I agree.

2 MR. BALOUGH: I have no other questions.

3 JUDGE DOLAN: Thank you.

4 Any redirect of that?

5 MR. FEELEY: We have no redirect.

6 JUDGE DOLAN: Thank you.

7 Counsel?

8 MR. STAHL: Thank you, your Honor.

9 Let me introduce myself. This is the

10 first appearance I have made in this proceeding. I

11 filed my appearance earlier this week.

12 My name is David Stahl. It's S-t-a-h-l.

13 I'm with the law firm, Eimer, Stahl, Klevorn and

14 Solberg in Chicago appearing on behalf of

15 Commonwealth Edison. I've been at the Commission a

16 number of times in the past, but it's been a while.

17 I'm certainly acquainted with Mr. Lazare from

18 previously encounters.

19 CROSS-EXAMINATION

20 BY

21 MR. STAHL:

22 **Q.** Mr. Lazare, how are you today?

1 **A.** Good. How are you?

2 **Q.** Good. If at any time you can't hear me,
3 let me know and --

4 JUDGE DOLAN: Mr. Stahl, they gave me the signal
5 in the back. So if you could bring the microphone
6 a little closer to your mouth, please.

7 MR. STAHL: Is this better?

8 (Discussion off the record.)

9 BY MR. STAHL:

10 **Q.** All right. Mr. Lazare, I'm going to be
11 cross-examining you on two subjects today; the
12 first one being A&G costs and the second one being
13 general and intangible plant. I'd like to start
14 with the A&G costs. Let me see if I understand
15 your position, Mr. Lazare.

16 I think you testify -- and I can refer
17 you to Lines 402 and 403 of your rehearing
18 testimony that you have, quote, uncovered, unquote,
19 a \$55.1 million -- what you call an overstatement
20 of A&G expenses; is that correct?

21 **A.** You're referencing?

22 **Q.** It's basically Lines 400 through 405 of

1 your rehearing testimony.

2 **A.** Well, the word "uncovered" was with respect
3 to Ms. Ebrey's testimony, but I think that's fair
4 to (inaudible) --

5 **Q.** You also refer to these as potential
6 overstatements.

7 Is there some sort of uncertainty in
8 your mind about this that requires further
9 investigation or what does the word "potential"
10 mean in that context?

11 **A.** Well, I think part of it -- I think it
12 would mean that it's not stating that that's the
13 full extent of our analysis that we -- based upon
14 the evidence at hand, that that would reflect \$89
15 million in overstatements. And it's not that we
16 have done an additional analysis to look at every
17 single item in A&G and identify all the other areas
18 where there may be overstatements as well. We just
19 focused on those particular areas.

20 **Q.** Focuses on four areas, does it not? Salary
21 and wages, employee healthcare, and office supplies
22 and expenses and Sarbanes-Oxley compliance costs,

1 correct?

2 A. Yes.

3 Q. And is it your testimony that you are
4 completely satisfied that based on the evidence at
5 hand, there is an \$89 million overstatement in
6 ComEd's A&G costs attributed to all four
7 categories?

8 A. Yes, based on the evidence.

9 Q. And of those four categories, you're
10 responsible for three, namely, salaries and wages,
11 Sarbanes-Oxley and employee healthcare, correct?

12 When I say "responsible for," you
13 provide the testimony on those three, correct?

14 A. Yes.

15 Q. And the biggest one in that category of
16 three expenses is attributable to salaries and
17 wages in which you have uncovered, in your words,
18 an overstatement of about \$45 million, correct?

19 A. Yes.

20 Q. And the bottom line, according to your
21 testimony as a result of all of this, is that since
22 that \$89 million is greater than the \$79 million

1 increase in A&G that the Company is requesting,
2 that the Commission should take away the \$17
3 million adjustment in A&G expenses that it awarded
4 ComEd in the order?

5 **A.** Yes.

6 **Q.** And, at a minimum, should not allow
7 anything above and beyond the \$17 million, correct?

8 **A.** Yes.

9 **Q.** Have you analyzed independently the work
10 that was done by Ms. Ebrey in uncovering the \$33
11 million so-called overstatement in office supplies
12 and expenses?

13 **A.** No, I did not.

14 **Q.** Are you familiar with how she did it?

15 **A.** I did not examine her work.

16 **Q.** Have you talked to her about it at all?

17 **A.** We worked independently. I didn't provide
18 input or we didn't discuss how she performed her
19 analysis.

20 **Q.** Do you know enough about her work to
21 understand that she reached that \$33 million number
22 by working off of unadjusted FERC Form 1 reports

1 from ComEd?

2 **A.** I am not familiar.

3 **Q.** You don't know?

4 **A.** No.

5 **Q.** You don't know how she did it, in other

6 words?

7 **A.** Yes.

8 **Q.** Let's talk about salaries and wages first.

9 And just preliminarily, Mr. Lazare, you

10 say at Line 268 of your testimony that ComEd's

11 calculated \$9.1 million increase related to

12 salaries and wages is, in your view, completely

13 unsupported; is that correct?

14 **A.** Yes.

15 **Q.** And in your view, a more reasonable

16 conclusion is that salaries and wages have, in

17 fact, declined by \$36 million since the case that

18 you were discussing with Mr. Townsend, the 2001

19 ComEd case, correct?

20 **A.** Actually, it was 2000 test year; but, yes.

21 **Q.** And you also claim that Ms. Houtsma has

22 testified that salaries and wages have increased --

1 salaries and wages have increased by 15.7 percent
2 since the last rates order and that's at Lines 218
3 and 219 of your testimony, correct?

4 **A.** Yes.

5 **Q.** And that, in fact, Ms. Houtsma did not
6 testify that ComEd's salaries and wages have
7 increased by either 15.7 percent or any other
8 amount since the last rate case, did she,
9 Mr. Lazare?

10 **Strike that question. Let me ask you**
11 **this question:**

12 **You know, do you not, Mr. Lazare, that**
13 **Ms. Houtsma testified that salary and wage rates**
14 **have increased by 15.7 percent since the last rate**
15 **case?**

16 **A.** Yes, she said that.

17 **Q.** Yes. And that's a much different statement
18 from saying that salaries and wages have increased
19 overall, is it not?

20 **A.** Yes, but she said both.

21 **Q.** In fact, she has not said both. She has
22 specifically acknowledged in her testimony, and

1 you're familiar with her testimony enough to know
2 that Exhibit 52.1 shows that ComEd's salaries and
3 wages -- salaries and wages expense has decreased
4 from the last rate case by nearly \$30 million?

5 **A.** Well, if you --

6 **Q.** Can you answer that Question? 52.1 --

7 **A.** I understand that, but I'm saying in
8 response to your question about whether she has
9 said have salaries and wages increased, I can give
10 you a specific quote --

11 **Q.** Let me --

12 **A.** -- in her testimony that says that.

13 **Q.** I'd like you to answer my question first.

14 **MR. FOSCO:** Well, your Honor, I think he made a
15 statement and I don't think he gets to make
16 speeches and then not have the witness respond.

17 **MR. STAHL:** I'll withdraw the speech. Let me
18 ask you a question.

19 **BY MR. STAHL:**

20 **Q.** You've got Exhibit 52.1 in front of you?

21 **A.** Yes, I do.

22 **Q.** And that shows, does it not, that salaries

1 and wages have decreased by nearly \$30 million from
2 prior case?

3 A. No, it does not necessarily.

4 Q. Does not necessarily?

5 A. No.

6 Q. Why do you say that?

7 A. Well, first off, the line presented first
8 includes bundles together salaries and wages as
9 well as office supplies and expenses and gives one
10 number for both accounts and never provides a
11 breakout of the salaries and wages separate from
12 office supplies and expenses.

13 In addition, if you look at the first
14 number in the first column, Column B, that is
15 \$96.803 million, which is a number that does not
16 appear anywhere else on the record in this case or
17 in the first phase of this docket.

18 So the fact that it -- there's no work
19 paper or no citation to any specific item on the
20 record or Commission order for that number
21 indicates to me that's an unsupported number
22 provided by the company.

1 **Q.** Let me ask you this question, Mr. Lazare.

2 You -- the \$9.1 million number that
3 Ms. Houtsma has testified to, that was calculated
4 for the work force size as it existed in ComEd in
5 the year 2004; isn't that correct?

6 **A.** That's correct.

7 **Q.** And the \$9.1 million represents the
8 increase over what the salary and wage expense
9 would have been for that same-sized work force in
10 2000, correct?

11 **A.** Yes.

12 **Q.** And you don't have any disagreement with
13 that calculation itself, do you?

14 **A.** No, I do not.

15 **Q.** All right. Now, I'm going to see if I --
16 I'm going to give you a little road map where I'm
17 going here so this is going to help us both out,
18 but I want to see if we can get agreement on any of
19 three points that I want to make with you during
20 this cross-examination.

21 And the first point I would like to make
22 with you is, see if you can accept this: That even

1 assuming that you are right and that ComEd's
2 salaries and expenses have decreased by \$36 million
3 or even other amount since 2000, that that decrease
4 is not inconsistent with an overall increase in
5 ComEd's A&G expenses?

6 Would you agree with that?

7 **A.** It does not necessarily preclude the
8 Company from getting its full \$79 million increase
9 simply by itself. I would agree, yes.

10 **Q.** And taking it away from \$79 million,
11 salaries and wages is one of 12 or 14 components of
12 A&G expenses, and simply because that decreases
13 doesn't mean that it couldn't be outweighed by
14 increases in 10 or 12 of the other components
15 resulting in an overall increase, correct?

16 **A.** Yes.

17 **Q.** All right. The second proposition I'd like
18 to see if we can get agreement on is with respect
19 to this \$9.1 million.

20 Again, even assuming that salaries and
21 wages overall have decreased by \$36 million or some
22 other amount between 2000 and 2004 does not mean

1 that for a same-sized work force, the salaries and
2 wages for that work force could not have increased
3 over that four-year period by some amount? We say
4 \$9 million.

5 Do you understand that?

6 **A.** No.

7 **Q.** In other words, the work force in 2000 was
8 a much larger work force -- it was a larger work
9 force. Without trying to characterize, it was a
10 larger work force than the work force in 2004,
11 correct?

12 **A.** Yes.

13 **Q.** And a chunk of that 2000 work force would be
14 reflected by that number of employees that is still
15 in the 2004 work force, correct?

16 **A.** Yes.

17 **Q.** The 2004 work force may be, overall, a
18 smaller number of salaries and wages than would
19 have existed for -- strike that.

20 The 2004 work force, overall, could
21 represent a smaller total of salaries and wages
22 than the bigger work force accounted for in 2000,

1 correct? And you say it is by \$36 million.

2 A. Yes.

3 Q. But that doesn't mean that for that little
4 chunk of the work force, if you take that work in
5 2004 and put it into 2000, that the salaries and
6 wages expenses attributable to that work force in
7 2000 could not have been smaller than it is in
8 2004?

9 A. I agree.

10 Q. Okay. The third proposition I'd like to
11 see if we can agree with is that FERC Form 1
12 data -- unadjusted FERC Form 1 data is not used by
13 ComEd, by the Commission, by the Staff or anybody
14 else in this room for rate-making purposes by
15 itself.

16 A. That I can't agree with you on.

17 Q. You cannot?

18 A. No. Sometimes if someone presents an
19 adjustment based upon FERC Form 1 data and it's the
20 most reasonable basis for setting an expense level
21 or a cost or a rate base item, then that could very
22 well work its way into the rate-making process in

1 the setting of rates.

2 Q. Let me say it another way; and that is,
3 that FERC Form 1 data might be considered the
4 starting point for test year information and there
5 may be a number of adjustments that are made to the
6 FERC Form 1 data.

7 But, by itself, FERC Form 1 data does
8 not go into the test year without some analysis and
9 adjustments along the way?

10 MR. FOSCO: I think we have a compound question.
11 I mean, you had two questions.

12 MR. STAHL: It's probably three questions.

13 BY MR. STAHL:

14 Q. I don't know if you -- did you follow me,
15 Mr. Lazare?

16 A. I think, generally, that's been the case,
17 that, you know, the rates that ratepayers pay for
18 most utilities do not simply reflect FERC Form 1
19 data, but they may not solely be the basis for
20 designing rates.

21 However, it can be used at various
22 junctures, as I said, in the rate-making process in

1 setting of rates, and the Commission can very well
2 decide to use unadjusted FERC Form 1 data for
3 certain rate-making purposes.

4 Q. Okay. On occasion, it might. But,
5 typically, it does not, does it?

6 A. Typically, there are a lot of adjustments
7 that are made to that data.

8 Q. And when you say "a lot of adjustments,"
9 those adjustments could be as much as, in any
10 particular case, \$50 million or more, just looking
11 at A&G expenses, for example?

12 A. Well, just based upon 52.10, you had way
13 over a hundred million dollars in sort of
14 unspecified adjustments here. So --

15 Q. A hundred --

16 A. -- just -- just adjustments can play a big
17 role in --

18 Q. And I think you said the adjustments that
19 you've just identified from that piece of paper
20 that you were looking at were in the range of a
21 hundred million dollars from the FERC Form 1 data;
22 is that correct?

1 **A.** Well, they're in the range of over hundred
2 million dollars from the A&G per order, plus
3 changes from Column N.

4 So adjustments are presented by
5 utilities at all different stages of the
6 rate-making process.

7 **Q.** Those are adjustments to the FERC Form 1
8 data, correct?

9 **A.** No, these are just additional adjustments
10 to -- for the Company's analysis.

11 **Q.** What is that you're looking at?

12 **A.** I'm looking at ComEd Exhibit 52.1.

13 **Q.** 52.1. Okay. We'll come back to that.

14 All right. Let's go back to the first
15 point and just put a little meat on those bones.
16 And that first point being the decrease in salaries
17 and wages would not be inconsistent with an overall
18 increase in A&G expenses.

19 That --

20 MR. FOSCO: Just to be clear, I think
21 Mr. Lazare's testimony was it wouldn't preclude it.
22 I mean --

1 MR. STAHL: It's not inconsistent with it. It's
2 the same thing, isn't it?

3 MR. FOSCO: Well...

4 THE WITNESS: Well --

5 MR. FOSCO: I think the witness's testimony is
6 his testimony.

7 MR. STAHL: Okay. Well, this is a different
8 question.

9 MR. FOSCO: Okay.

10 BY MR. STAHL:

11 **Q.** It's not inconsistent with an increase with
12 in overall A&G, is it?

13 **A.** Well, just to the extent that there's
14 downward adjustment in wages and salaries, it makes
15 it much -- that much less likely that there would
16 be an increase in total A&G.

17 **Q.** The downward or the decrease in salaries
18 and wages that you talk about, that was
19 attributable to the fact that in 2001 and 2004, a
20 substantial number of employees found themselves
21 employed by Exelon or Exelon Business Services
22 instead of ComEd, correct?

1 **A.** The reason or the reduction is not clear
2 exactly what the cause of that reduction is, what
3 the components of that \$36 million reduction
4 happens to be.

5 **Q.** You, I think, have said in your testimony,
6 that there are two possible factors that could
7 cause a decrease in salaries and wages. A, a
8 smaller work force; or B, a decrease in the rate of
9 salaries and wages, correct?

10 **A.** Yes.

11 **Q.** You are not in a position to testify that
12 the salary and wage levels that ComEd pays its
13 employees has decreased over the last four years,
14 are you?

15 **A.** That -- no, I'm not.

16 **Q.** So, really, as far as you can tell, the
17 only really plausible explanation for this decrease
18 in salaries and wages that you've identified is the
19 fact that there is a smaller work force at ComEd
20 today?

21 **A.** Yes.

22 **Q.** And you understand, do you not, that the

1 work that was performed by those employees or those
2 former employees of ComEd didn't disappear or are
3 somehow no longer necessary, correct?

4 **A.** I can't say for sure how much of the work
5 has disappeared or how much recovery continues to
6 exist and I can't say who has taken over that work,
7 whether it's ComEd employees, whether it's PSC
8 employees. That would be speculation on my part
9 and I haven't found any evidence from the Company
10 that would really provide a detailed explanation or
11 breakdown of the tasks performed by the Company
12 employees beforehand and how they're now being
13 performed today.

14 **Q.** You understand, don't you, that the
15 distribution function and operations of ComEd today
16 are basically the same as they were in 2000?
17 Although maybe a little more complicated today with
18 the greater number of customers, but it's basically
19 the same function that was being performed in 2000?

20 **A.** Distribution, yes.

21 **Q.** And that's what we're talking about here,
22 isn't it, distribution with rates service?

1 **A.** Yes.

2 **Q.** All right. The fact of the matter is,
3 Mr. Lazare, based on your review of -- I think you
4 just had it in front of you, 52.1, shows that the
5 outside services line item of ComEd's A&G expenses
6 increased from about three and a half million
7 dollars in 2000 to about \$89 million in 2004.

8 Do you agree with that?

9 **A.** That's what the -- I agree that's what the
10 schedule says.

11 **Q.** Have you uncovered any information that
12 suggests that that schedule is incorrect?

13 **A.** Well, only that it's incomplete.

14 **Q.** My question is, is there anything in there
15 that is incorrect about it?

16 **A.** Well, there's not enough information on
17 which to base a determination about whether this is
18 a reasonable result or not.

19 **Q.** Well, I'm not saying whether it's a, quote,
20 reasonable, unquote, result or not. Do you have
21 any doubt in your mind that in fact -- never mind
22 doubt in your mind.

1 Have you presented any evidence to this
2 Commission that suggests that ComEd, in fact, did
3 not spend at least \$89 million on outside services
4 in 2004?

5 **A.** No, I have not.

6 **Q.** And, in fact, that entire Exhibit 52.1 that
7 you're looking at there, that shows all of the
8 impacts going both ways, increases and decreases,
9 in all of the components of ComEd's A&G expenses,
10 does it not?

11 **A.** That's what it claims to do.

12 **Q.** Yes. But, again, you haven't presented any
13 evidence to the Commission in this case that --
14 except with respect to your salaries and wages.
15 I'll grant you that. Maybe Sarbanes-Oxley -- no
16 evidence that the Company hasn't spent these
17 amounts?

18 You may have questions about their
19 reasonableness. I understand that. But you have
20 not presented any evidence to the Commission that
21 suggests that the Company did not spend at least
22 these amounts in 2004, correct?

1 **A.** Well, I would say that we have certainly
2 presented -- myself and Ms. Ebrey have presented
3 evidence that increased -- that indicates the
4 Company has overstated certain accounts; that
5 information we were provided does not comport with
6 the numbers presented in this exhibit. Our
7 information is significantly higher.

8 So based upon the reasonableness of our
9 analysis, I would call into question this exhibit.

10 **Q.** You don't doubt that the Company was
11 charged at least \$7.8 million for Sarbanes-Oxley
12 compliance costs in 2004?

13 **A.** By Exelon?

14 **Q.** Yes.

15 **A.** No, I don't doubt that.

16 **Q.** And that's pursuant to allocation
17 methodology approved by the Securities and Exchange
18 Commission, correct?

19 **A.** That's my understanding.

20 **Q.** And, likewise, I know you address employee
21 healthcare and you have some questions about
22 whether ComEd increases were reasonable or not, but

1 you don't doubt, again, that ComEd spent the amount
2 of money that it claims to have spent on employee
3 healthcare in 2004?

4 **A.** I haven't found any specific item to say to
5 that --

6 **Q.** You haven't found --

7 **A.** But it doesn't mean that I, therefore, find
8 in the affirmative that they have, in fact, spent
9 these amounts.

10 **Q.** I guess I understand that.

11 You say you haven't found any specific.
12 You haven't found any general information that
13 suggests they haven't spent that money on employee
14 healthcare either, have you?

15 **A.** That's correct.

16 **Q.** That leaves office supplies and expenses
17 and salaries and wages, and you and Ms. Ebrey think
18 that the amount ComEd claims to have spent on that
19 is overstated.

20 But, again, both -- well, certainly you,
21 in your analysis of salaries and wages, use FERC
22 Form 1 data to reach that conclusion, correct?

1 **A.** Yes.

2 **Q.** And it's unadjusted FERC Form 1 data, isn't

3 it?

4 **A.** Yes.

5 **Q.** And you at least know as much about

6 Ms. Ebrey's analysis of office supplies and

7 expenses to understand that she also used

8 unadjusted FERC Form 1 data, don't you?

9 **A.** Well, just the one -- maybe I should just

10 make one qualification.

11 I used unadjusted, but, nevertheless, I

12 did use the allocation for distribution only of

13 that unadjusted number.

14 **Q.** I understand.

15 **A.** As I said, that would be something to

16 explore directly with Ms. Ebrey because I did not

17 examine her testimony.

18 **Q.** All right. Now, just summing up on 52.1,

19 Mr. Lazare, this does show, doesn't it, that there

20 were a number of increases in components of A&G

21 expenses and it shows them by item, correct?

22 **A.** According to this schedule, yes.

1 **Q.** And it shows an increase -- we've already
2 talked about outside services -- from 3.4 million
3 to 89 million, correct?

4 **A.** That's what the schedule says.

5 **Q.** And it shows an increase in post-retirement
6 benefits from 14.5 million to 19.3 million,
7 correct?

8 **A.** Yes.

9 **Q.** And it does show on a combined basis a
10 decrease of nearly \$30 million on A&G salaries and
11 office supplies and expenses, correct, on the very
12 first item?

13 **A.** Yes.

14 **Q.** All right. And the net effect of all of
15 the additions and decreases on this schedule or
16 this exhibit is to show increases in ComEd's A&G
17 expenses of about \$79 million between 2000 and
18 2004, correct?

19 **A.** That's what it claims to show.

20 **Q.** And the -- this is precisely the breakdown
21 that the Commission was interested in receiving on
22 rehearing as far as you know, correct; a

1 line-by-line, item-by-item reconciliation of the
2 \$79 million increase?

3 **A.** No, I would disagree.

4 **Q.** You would?

5 Now, let's talk about the FERC Form 1
6 data. The -- Ms. Houtsma testifies in her rebuttal
7 testimony at Pages 187 to 201. Maybe we ought to
8 just take a look at that. Do you have her rebuttal
9 testimony?

10 **A.** Yes.

11 **Q.** And she says at the beginning of Line 187,
12 Generally, the development of test year data begins
13 with the data reported in the FERC Form 1.

14 You agree with that, correct?

15 **A.** Yes.

16 **Q.** And then she says in the next sentence,
17 that, However, adjustments to such data are made
18 for a variety of items that are either not
19 requested by the utility for rate recovery or are
20 disallowed by the ICC, correct?

21 **A.** Yes.

22 **Q.** And then she says for the 2000 test year

1 used in the last rate case, Docket 01-0423, over
2 \$74 million of costs, net of jurisdictional
3 adjustments, reported in the FERC Form 1 were
4 either excluded from ComEd's rate request or
5 disallowed in the final ICC order.

6 Are you able to verify that?

7 **A.** I have no reason to disagree, but I really
8 can't sit here and say that number is correct.

9 **Q.** She did, however, present a schedule in her
10 work papers that summarizes all of that, didn't
11 she?

12 **A.** If you could direct me to that schedule.

13 **Q.** Work paper 52.1. Do you have that with
14 you?

15 **A.** I may not have it.

16 **Q.** I have a copy, if you'd like to take a look
17 at this. Maybe we'll mark this as ComEd Lazare
18 Cross Exhibit 1 on rehearing. Is that how we do
19 that?

20 **MR. RIPPKE:** Let's call it 23. ComEd Cross
21 Exhibit -- would you prefer to restart the cross
22 exhibits numbers on rehearing?

1 JUDGE DOLAN: I think so.

2 MR. RIPPIE: Okay.

3 MR. STAHL: Then it's 1?

4 MR. RIPPIE: It's 1.

5 MR. STAHL: ComEd Rehearing Cross Exhibit No. 1.

6 (Whereupon, ComEd Cross Rehearing

7 Exhibit No. 1 was

8 marked for identification

9 as of this date.)

10 MR. STAHL: I have copies here, if anybody else

11 would like one.

12 Your Honor, would you like me to tender

13 one up to you or does the reporter do that?

14 I'm only marking Page 2 to 10 because

15 Page 1 doesn't relate to what I'm going to be

16 talking to you about.

17 BY MR. STAHL:

18 Q. All right. Mr. Lazare, you recognize that

19 as a ComEd work paper submitted by Ms. Houtsma in

20 this case?

21 A. Yes.

22 Q. All right. And it does show on Pages 7

1 through 10, approximately, adjustments that were
2 made in the FERC Form 1 data in the 2000 rate case?
3 And I'm looking specifically at Page 7.

4 **A.** Okay.

5 **Q.** 7 of 10. You see under the Column 2000,
6 for FERC Form 1 at the very bottom, there's a \$465
7 million number?

8 **A.** Yes.

9 **Q.** And then on the next page, Page 8, there's
10 a total test year and pro forma adjustments of
11 \$50,247,000.

12 You see that?

13 **A.** Yes.

14 **Q.** By the way, have you examined these work
15 papers before today?

16 **A.** I've looked at them -- I've looked at all
17 the work papers to the extent -- examination.

18 **Q.** Did you look at these work papers to verify
19 the truth of Ms. Houtsma's testimony that we were
20 just looking at on Lines 187 through 201 about the
21 amount of adjustments made in FERC Form 1 data in
22 the 2000 case?

1 **A.** I'm not clear what your question is.

2 **Q.** Well, she says here on these lines that I
3 was referring to you, Lines 187 through 201 of her
4 rebuttal testimony, that there were \$74 million of
5 adjustments in the 2000 case, and then she
6 specifically references her work papers, 52.1 and
7 she says those work papers specify all of the
8 adjustments to the FERC Form 1 data that were made
9 in the 2000 case and the 2004 case.

10 And I guess my question to you is, when
11 you read this testimony, did you look at these work
12 papers to, in fact, try to verify or understand so
13 that you could agree or disagree with what
14 Ms. Houtsma was testifying to?

15 **A.** I don't know exactly the order in which I
16 read the testimony and looked at the work papers,
17 but I did look at both.

18 **Q.** Okay. Well, let's continue working through
19 the work papers. We've identified \$50 million of
20 adjustments on Page 8, correct?

21 **A.** Yes.

22 **Q.** And then you see on Pages 9 and 10, yet

1 additional adjustments being made that appear on
2 Page 10 under -- these are adjustments made by the
3 order in the 2000 case, an additional \$23,979,000.

4 Do you see that?

5 A. That's the company's conclusion regarding
6 those adjustments, yes.

7 Q. Right. You don't have any reason to
8 disagree with those, do you?

9 A. I don't have any -- I have not drawn --
10 examined those specifically, each of those
11 adjustments, to see whether or not -- what the
12 basis was for them.

13 Q. As you sit here today, Mr. Lazare, you have
14 no basis on which to disagree with any of those
15 adjustments set forth on this exhibit, do you?

16 A. I have not found any specific reason to.

17 Q. All right. And those adjustments that
18 we've identified total, in fact, slightly more than
19 \$74 million, do they not?

20 A. Yes.

21 Q. And, likewise, can you show me where the
22 adjustments would show up for the 2000 -- the 2004

1 rate case, this current case?

2 Are you familiar enough with the work
3 papers to be able to do that?

4 A. No, not --

5 Q. All right. Well, let's see if we can do it
6 together then.

7 Go to Page 2, Page 2 of 10. It should
8 be the first page of the exhibit. Do you see at
9 the very bottom of that page under 2004, FERC
10 Form 1, \$347,636,000?

11 A. Yes.

12 Q. And then if you would turn to Page 3, you
13 will see under the column Total Adjustments
14 \$25,725,000.

15 You see that?

16 A. Yes.

17 Q. And do you understand those to be
18 adjustments that the company itself made to the
19 FERC Form 1 data in this case?

20 A. Yes.

21 Q. And then on Page 5 of 10, we see additional
22 adjustments made by the Company of another

1 \$16,721,000; is that correct?

2 **A.** I also see --

3 **Q.** In the Column W?

4 **A.** I also see V, Column V.

5 **Q.** Okay. So additional adjustments in

6 Column V?

7 **A.** And W.

8 **Q.** And W? Two of which total about \$38.3

9 million, correct?

10 **A.** Yes.

11 **Q.** And then additional adjustments in

12 Column AA, Column AB, Column AC and Column AE over

13 on the next page?

14 **A.** Yes.

15 **Q.** And those were all adjustments made either

16 in the rebuttal case or at some other stage of the

17 proceeding, correct?

18 **A.** I can't tell you exactly where those -- all

19 those adjustments were --

20 **Q.** Where they were made?

21 **A.** -- tied to?

22 **Q.** But you can agree, can't you, that the

1 Company started out with \$347 million in the FERC
2 Form 1 and at the end of the day, looking at the
3 very last column on Page 6 of 10, adjusted itself
4 down to \$256 million, correct?

5 A. Yes, approximately.

6 Q. That's about a, what? A hundred million
7 dollars out of 347. That's about a 30 percent
8 adjustment, is it not? Little less than 30 percent
9 maybe?

10 A. Possibly.

11 Q. It's close enough, huh?

12 A. For government work, yeah.

13 Q. All right. I'll accept that.

14 Now, we've talked about the adjustments
15 made to FERC Form 1 data for rate-making purposes.
16 Let me ask a slightly different set of questions,
17 but questions that are related to that issue; and
18 that is, you know, we've looked at two cases.
19 We've seen adjustments in both cases.

20 There is no predictable ratio between
21 any two cases about how much the FERC Form 1 data
22 is going to be adjusted, is there?

1 I mean, for example, we identified 30
2 percent in the 2004 case or, roughly, 30 percent.
3 That's not an ironclad benchmark or rule that's
4 applicable in all cases, is it?

5 **A.** For adjustment of data? No.

6 **Q.** Yeah. And, in other words, you couldn't
7 say as a general rule that just because FERC Form 1
8 data increases or decreases between two periods of
9 time four years apart, that for rate-making
10 purposes, the adjustment would be the same?

11 And let's just salaries and expenses as
12 an example. You couldn't say that just because
13 salaries and wages from the FERC Form 1 data
14 decrease by \$36 million from 2000 to 2004, that for
15 rate making purposes, the decrease would also be
16 \$36 million or some predictable fraction of \$36
17 million, correct?

18 **A.** You'd have to look at each case and look at
19 the arguments that -- and decide whether or not
20 it's a feasible basis for rate making.

21 **Q.** Yeah. And so I think what you're saying is
22 the answer to my question is, yes, there is no

1 predictable ratio or formula that you could apply
2 to determine the amount of rate-making decrease
3 that would flow from a FERC Form 1 decrease,
4 correct?

5 **A.** That's correct.

6 **Q.** And you would also agree, would you not,
7 that a decrease in a FERC Form 1 expense may be
8 driven by a cost that is not at all reflected in
9 rates?

10 **A.** That's possible.

11 **Q.** And I think Ms. Houtsma gives an example of
12 that in her rebuttal testimony, maybe right at the
13 lines we were just looking at, when she talks about
14 incentive compensation.

15 She points out at Line 192 that a good
16 example of the types of exclusions I am referring
17 to here is in incentive compensation, which as
18 reflected in FERC Form 1, declined by \$35 million
19 from 2001 to 2004.

20 Do you know enough about the FERC Form 1
21 to agree with Ms. Houtsma's testimony that the
22 incentive compensation in those two FERC Form 1s

1 declined by that much in those periods?

2 **A.** Well, I have no basis to say that her
3 statement is wrong.

4 **Q.** And you couldn't conclude from the fact
5 that incentive compensation decreased by \$35
6 million in that four-year period, that for
7 rate-making purposes, ComEd's A&G expenses
8 decreased by \$35 million, could you?

9 **A.** Overall?

10 **Q.** Yes.

11 **A.** No.

12 **Q.** Nor could you say that with respect to
13 incentive compensation specifically, could you?

14 **A.** Say -- say what with respect to?

15 **Q.** The fact that, as reflected in the FERC
16 Form 1s, incentive compensation decreased by \$35
17 million over a four-year period doesn't mean that
18 for rate-making purposes, ComEd's A&G expenses
19 decreased by \$35 million over that same period?

20 **A.** That specific statement, correct.

21 **Q.** That's correct, did you say?

22 **A.** Yes.

1 **Q.** And that's because most of the incentive
2 compensation is not reflected in rates at all,
3 correct?

4 **A.** That's correct.

5 **Q.** In fact, the amount -- the small amount of
6 incentive compensation reflected in ComEd's rates
7 was about the same in 2000 as it is in this case in
8 the 2004 test year. Are you familiar with that?

9 **A.** Say that again.

10 **Q.** The small amount of incentive compensation
11 reflected in ComEd's rates in 2000 and in the test
12 year in this case, 2004, is about the same?

13 **A.** I -- I'm not sure with respect to the
14 incentive compensation what the levels are.

15 **Q.** All right. Does about less than \$4 million
16 sound familiar to you at all?

17 **A.** I'm not familiar.

18 **Q.** Regardless of the amount, whether it's two
19 million or four million or some other amount, do
20 you agree that the amount is essentially unchanged
21 between 2000 and 2004?

22 And by "the amount," I mean the amount

1 of incentive compensation in ComEd's rates.

2 **A.** It would be helpful if you showed a
3 schedule that breaks that down and I could --

4 **Q.** Okay. Let me ask you --

5 **A.** -- then -- then I have a better basis to
6 for an answer.

7 **Q.** Well, I understand. If I had the schedule
8 handy, I'd show it to you. Maybe I'll find it a
9 little later.

10 But, as you sit here, you don't know the
11 answer to my question?

12 **A.** No, not on a basis.

13 **Q.** I'll see if I can find one in a little bit.

14 Mr. Lazare, let's -- let's just turn to
15 Sarbanes-Oxley expenses for a minute.

16 You say at Line 295 of your testimony on
17 rehearing that the Company appears to have
18 overstated the level of Sarbanes-Oxley compliance
19 costs.

20 And once you find that reference in your
21 testimony, I'm going to ask you whether you are
22 disputing that the Company spent at least \$7.8

1 million. I think you may have answered that
2 already and I think you agreed with me that that
3 sounded -- that you have no basis at least on which
4 to dispute that ComEd was charged \$7.8 million in
5 Sarbanes-Oxley compliance costs based on the SEC
6 abbreviated allocation, correct?

7 **A.** So I say you're -- I'm sorry. I got the
8 wrong witness.

9 Yes, I have line. Yes, I agree with
10 my -- I think you threw in an extra question there
11 as I was looking for Line 295.

12 **Q.** I was hoping you weren't paying attention,
13 but I can see you were.

14 Well, my question is, when you say that
15 the Company has overstated its Sarbanes-Oxley
16 compliance costs, you're not suggesting that, in
17 fact, the Company was responsible for less than
18 \$7.8 million and, somehow, they were only charged
19 \$2 million and they're trying to fool somebody
20 here.

21 You're not suggesting that, are you?

22 **A.** I said overstated for the basis -- from a

1 basis for the Commission's determination of what's
2 reasonable.

3 Q. So your only dispute is the reasonableness
4 of that amount and not whether, in fact, it was
5 incurred, correct?

6 A. Right. The -- overstated in the amount
7 that should be collected from ratepayers.

8 Q. Okay. You say also in Line 328 that the
9 starting point for your estimate of the
10 overstatement -- and by that, I will assume you
11 mean reasonableness -- is the CRA study which was
12 attached to Ms. Houtsma's testimony as
13 Exhibit 52.10, correct?

14 A. Yes.

15 Q. And not only was that the starting point,
16 but that's also the ending point of your analysis,
17 correct?

18 A. Well, not totally. I had to do a little
19 small calculation where I had to take the company's
20 delivery service revenue requirement, multiply it
21 times a tenth of a percent and come up with what I
22 determine to be a reasonable number. So it's not

1 the most complicated math I've done, but...

2 Q. Okay. But aside from the math you did, the
3 CRA study is the only document that you referred
4 to, the only support that you looked at for your
5 conclusion concerning reasonableness, correct?

6 A. Yes.

7 Q. And I believe that the categories of costs
8 that comprise this \$7.8 million were attached to
9 Ms. Houtsma's initial testimony as an exhibit.

10 Do you recall that?

11 A. Yes.

12 Q. And you have not made any independent
13 analysis of those actual expenditures that leads
14 you to conclude that any of those expenditures were
15 not required in order to comply with
16 Sarbanes-Oxley, have you?

17 A. I only based it upon the information from
18 the CRA report.

19 Q. And that exhibit that specifies at least
20 the categories of expenditures is Exhibit 52.9,
21 correct?

22 A. Yes.

1 **Q.** Do you know what Sarbanes-Oxley requires in
2 terms of compliance of a company like Exelon?

3 **A.** I can -- I know that it requires -- I think
4 the officers to have -- personally certify the
5 financial results for the company. They have to --

6 **Q.** Does it require anything more than that?

7 **A.** I'm sure there are other -- it requires
8 management and the company's independent auditors
9 to issue two new public reports, management report
10 on the effectiveness of the company's internal
11 control over financial reporting. In conjunction
12 with the audit of the company's financial
13 statements and independent auditor's report that
14 includes both an opinion on management's assessment
15 and an opinion on the effectiveness of the
16 company's internal control over a financial
17 reporting.

18 **Q.** Are you reading from the CRA study?

19 **A.** Yes.

20 **Q.** Aside from what is set forth in the CRA
21 study, do you have any independent knowledge about
22 what it takes for a company like Exelon to comply

1 with Sarbanes-Oxley?

2 **A.** No.

3 **Q.** And, again, aside from what you may have
4 read in the CRA study, you personally don't have
5 any information about what is a proper or necessary
6 expenditure to comply with Sarbanes-Oxley, do you?

7 **A.** Independent of the study, I do not.

8 **Q.** Do you know any factor that affects the
9 level of any particular company's costs to comply
10 with Sarbanes-Oxley?

11 **A.** I'm -- I would think that one factor would
12 be the degree to which the company had internal
13 control over its financial reporting, if it's
14 financial house was in order. It would probably
15 be -- I would expect the costs would be less than
16 if you had a company that's accounting was in some
17 kind of disarray.

18 I would expect that you would encounter
19 greater Sarbanes-Oxley costs because as I --
20 because you have to get an independent auditor's
21 report with an opinion on management's assessment
22 and on the effect -- the company's effectiveness of

1 control. And under that situation, if, you know,
2 your costs were not under control, then I think
3 you'd be in a position of having to expend
4 additional amounts to get your costs under control.

5 Q. I think you said you would guess that was
6 the case. Are you --

7 A. That's my best -- that's my best
8 assessment --

9 Q. Are you --

10 A. -- of --

11 Q. Are you reading from something when you say
12 that?

13 A. No.

14 Q. Okay. Do you know what the additional
15 costs a company might incur just in terms of a
16 range, a company whose financial house is not in
17 order, as I think you described it, how much more
18 its costs might be as opposed to a company whose
19 financial house is in order?

20 A. I don't know specifically.

21 Q. Aside from that general characterization of
22 a company's financial house being in order or

1 not -- and I'm not disagreeing with you in any way.
2 That may be a factor -- are you able to identify
3 any other factors that might affect the level of a
4 particular company's costs to comply with
5 Sarbanes-Oxley?

6 **A.** Not as we sit here.

7 **Q.** How many other rate cases have come before
8 this Commission since Sarbanes-Oxley was passed in
9 which Sarbanes-Oxley compliance costs were
10 challenged by the staff on grounds of
11 unreasonableness?

12 **MR. FOSCO:** I guess I'll object to foundation.
13 I don't know. I think we need to first establish
14 his foundation to know that.

15 **BY MR. STAHL:**

16 **Q.** Well, I guess if he doesn't know it, he can
17 just tell me he doesn't know it and there'll be
18 foundation and we can move on.

19 I'll withdraw the question.

20 Do you know, Mr. Lazare, whether there
21 have been any other cases before this Commission
22 since Sarbanes-Oxley was passed that involved

1 utilities that were required to comply with
2 Sarbanes-Oxley?

3 **A.** I'm not familiar with what role, if any,
4 Sarbanes-Oxley has played in other utility rate
5 cases before the Commission.

6 **Q.** You have participated and for all I know
7 may still be participating in the Ameren cases, IP,
8 CIPS and CILCO before this Commission, correct?

9 **A.** Yes.

10 **Q.** Do you know whether in this those cases or
11 in any of those cases, Staff took a look at the
12 Ameren Sarbanes-Oxley compliance costs?

13 **A.** I can't say specifically what action Staff
14 has taken with respect to Sarbanes-Oxley in
15 other -- in that proceeding.

16 **Q.** If, in fact, they've taken any action with
17 respect to Sarbanes-Oxley, correct?

18 **A.** That's correct.

19 And I also can't remember whether Ameren
20 asked for a specific increase in A&G expense to
21 recover Sarbanes-Oxley.

22 **Q.** Have you ever personally made a

1 recommendation that any other utility's
2 Sarbanes-Oxley compliance costs be disallowed?

3 A. No.

4 Q. Did you in the Ameren cases determine
5 whether the Ameren Sarbanes-Oxley compliance costs
6 exceeded a tenth of a percent of any of the
7 company's revenues in those cases?

8 A. No.

9 Q. Do you know whether anybody on Staff did?

10 A. I don't know.

11 Q. Was the CRA study that's 52.10 to
12 Ms. Houtsma's testimony the first knowledge that
13 you had about any average costs to comply with
14 Sarbanes-Oxley?

15 A. Yes.

16 Q. Do you know whether any utility anywhere in
17 the United States has expended costs for
18 Sarbanes-Oxley compliance in excess of a tenth of a
19 percent of that utility's revenues?

20 A. Excluding ComEd?

21 Q. Yes.

22 A. No.

1 **Q.** You don't know, in fact, what any other
2 utility company has spent on Sarbanes-Oxley
3 compliance costs, do you?

4 **A.** No.

5 **Q.** Let me see if I understand your
6 recommendation on what the Commission ought to do
7 with respect to Sarbanes-Oxley compliance costs.

8 Are you recommending that ComEd be
9 allowed to recover only up to a tenth of a percent
10 of its delivery service revenues in this case?

11 **A.** For Sarbanes-Oxley?

12 **Q.** Yes, sir.

13 **A.** Yes.

14 **Q.** And that would be approximately \$1.68
15 million; is that correct?

16 **A.** Yes.

17 **Q.** Now, Ms. Houtsma has said in her testimony
18 that that calculation -- I'm talking about her
19 rebuttal testimony -- that calculation is
20 improperly based only on ComEd's delivery service
21 revenues. And even if you're going to apply this
22 tenth of a percent of revenues, it ought to be

1 applied to all of ComEd's revenues of \$5.8 billion.

2 Are you familiar with that testimony?

3 A. Yes.

4 Q. Do you agree with that testimony?

5 A. No.

6 Q. Do you know whether the tenth of a percent
7 reflected in the CRA study is based in any case at
8 all on looking only at a portion of a company's
9 revenues?

10 A. Well, the tenth of a percent from the CRA
11 study looked basically at the total revenues and
12 the percentage of the total revenues.

13 Q. Total revenues?

14 A. Right.

15 Q. Not a portion of the revenues of any of
16 those companies involved in that study, to your
17 knowledge?

18 A. Correct.

19 Q. Do you know if there were any utilities of
20 any kind, gas, electric, water, sewer, anything
21 else that were represented in that study?

22 A. No.

1 **Q.** Did you make any effort to find out?

2 **A.** No.

3 **Q.** If there were utilities represented in that

4 study, you wouldn't know if the revenues used for

5 those utilities were a hundred percent of their

6 revenues or some smaller percent, would you?

7 **A.** No.

8 **Q.** Would you agree with me, Mr. Lazare, that

9 implicit -- or let me just go back for a minute.

10 I think you said you would recommend

11 that the Commission allow only 1.68 million of

12 Sarbanes-Oxley compliance costs out of the 7.8 that

13 ComEd is requesting. That leaves about \$6.12

14 million that are sort of floating out there

15 somewhere, correct?

16 **A.** Actually, I think I did a favor to the

17 Company and I rounded up to 1.7, so...

18 **Q.** Oh, my gosh. What a -- what a guy.

19 **A.** Well, kind of close to Christmas.

20 **Q.** Oh, what a guy. Okay. We'll go with 1.7.

21 We'll take it, but not as a final offer. It's

22 better than 1.68.

1 So that leaves 1.7. So that leaves \$6.1
2 million unaccounted for somewhere, right?

3 The Company's asking for 7.8, you would
4 say 1.7 is okay, and the difference is \$6.1
5 million.

6 **A.** Unaccounted? I just think that's the
7 amount that should be passed on to ratepayers. It
8 doesn't mean the others -- whatever the remainder
9 is, is not, I think, an issue for the regulatory
10 process.

11 **Q.** It's an issue for the regulatory process?

12 **A.** It's -- I mean, whether it's unaccounted
13 for or whatever, the issue for the regulatory
14 process is how much of that \$7.8 million should be
15 passed along to ratepayers. And I'm just --

16 **Q.** Are you --

17 **A.** -- arguing that 1.7 million should be.

18 **Q.** You're not saying that any part of that
19 \$6.1 million was imprudently spent, are you?

20 **A.** No.

21 **Q.** And you can't identify any activities that
22 are accounted for by any of that \$6.1 million that

1 you would characterize as either being unwise or
2 unnecessary for Exelon to comply with
3 Sarbanes-Oxley, correct?

4 **A.** I can't say that -- I have not drawn any
5 conclusion that those -- about those specific costs
6 expended on 52.9, whether the corporation should
7 not incur those costs.

8 **Q.** Whether those -- whether the activities
9 that gave rise to those costs were unwise or
10 unnecessary or unreasonable, you're not in a
11 position to make that judgment, correct?

12 **A.** Well, I would only say that based upon
13 Ms. Houtsma's criteria, I guess the argument could
14 be made that those costs were excessive.

15 **Q.** What are Ms. Houtsma's criteria?

16 **A.** Well, they were presented in her Exhibit
17 52.0, corrected, starting on Line 298.

18 She says, I have also attached as ComEd
19 Exhibit 52.10 a study done by Charles River
20 (phonetic) Associates that shows that while
21 Sarbanes-Oxley compliance costs necessarily vary
22 from company to company, ComEd's Sarbanes-Oxley

1 compliance costs are comparable to such costs
2 incurred by other companies similar in size to
3 ComEd.

4 And my reading from that is that if CRA
5 is saying that these costs average one tenth of one
6 percent of revenues, and for Exelon, they exceed
7 one tenth of one percent for revenues, then that
8 calls into question her statement whether they're
9 comparable and might also suggest that they are not
10 comparable.

11 So then she's -- by her statement here,
12 she might be suggesting that Exelon's costs are
13 excessive as well.

14 **Q.** She nowhere uses in this passage that you
15 just cited the words "reasonable," does she, or
16 "just and reasonable"?

17 **A.** No, she doesn't use those words.

18 **Q.** She doesn't say in her testimony that CRA
19 study establishes a rate-making standard of
20 reasonableness for Sarbanes-Oxley compliance costs,
21 does she?

22 **A.** Well, I think by having this as the only

1 supporting exhibit and saying -- and using the
2 Charles River analysis as a basis for determining a
3 foundation for Sarbanes-Oxley compliance costs, I
4 think she's saying that is the standard to be used.

5 Q. She doesn't say in here that the CRA study
6 determines a foundation for Sarbanes-Oxley
7 compliance costs, does she?

8 A. She implies it.

9 Q. She doesn't say it, does she?
10 You infer it perhaps, but she doesn't
11 say it?

12 A. Well, I think you could argue that she does
13 say it.

14 Q. She -- I'm sure you could argue that. She
15 does say that they're comparable; isn't that what
16 she says?

17 A. Yeah, that -- that she is using this as a
18 standard for determining what comparable basis for
19 Sarbanes-Oxley compliance costs are.

20 Q. Before you saw the CRA study or before you
21 saw ComEd's testimony on Sarbanes-Oxley compliance
22 costs, did you have a clue how much any

1 publicly-traded corporation would spend on
2 Sarbanes-Oxley?

3 Would you have guessed a million
4 dollars? A hundred million dollars?

5 **A.** I did not know.

6 **Q.** No, you didn't have a clue.

7 You think the Commission knew anything
8 about what publicly-traded companies spend on
9 Sarbanes-Oxley compliance?

10 MR. FOSCO: Move to strike counsel's speech
11 about you didn't have a clue.

12 MR. STAHL: Well, it is a question.

13 MR. FOSCO: No, it wasn't a question. You went
14 on to a different question.

15 MR. STAHL: All right.

16 MR. FOSCO: Ask a straightforward question,
17 please.

18 MR. STAHL: I'll agree that that should be
19 stricken.

20 JUDGE DOLAN: Yeah. Strike that from the
21 record.

22 BY MR. STAHL:

1 **Q.** Do you believe that the Commission had any
2 information about what publicly-traded companies
3 had to spend on Sarbanes-Oxley compliance costs
4 before this issue came up about ComEd's A&G
5 expenses?

6 **A.** Are you -- I'm not clear of your question.
7 Are you suggesting that in some
8 regulatory proceeding or their independent
9 analysis, because I can't say what -- how the
10 Commission members, what they know or don't know
11 about Sarbanes-Oxley independently. So I'm not
12 clear where you're --

13 **Q.** I'll --

14 **A.** -- going with that question.

15 **Q.** Let me withdraw that question and ask
16 another question.

17 Would you agree with me that nothing in
18 the CRA study suggests that any company that spends
19 more than one tenth of one percent of its revenues
20 on Sarbanes-Oxley compliance is spending money
21 unwisely or unnecessarily?

22 **A.** You don't say that that directly, no.

1 **Q.** No, they don't say that indirectly either,
2 do they?

3 **A.** No.

4 **Q.** And you would certainly understand, since
5 the CRA study presents average Sarbanes-Oxley
6 compliance costs, that many of the companies in
7 that study would spend more than average and some
8 would spend below average, correct?

9 **A.** Yes.

10 **Q.** And there's nothing in the CRA study that
11 suggests that anyone who spends above average by
12 any amount is acting unnecessarily or unwisely.
13 Would you agree with that?

14 **A.** It doesn't draw a conclusion either way
15 about whether it's wise or unwise.

16 **Q.** I think -- you've answered the question.

17 Since you don't know that any utilities
18 were represented in the CRA study, it follows, does
19 it not, that you wouldn't know what the average
20 compliance costs were for any utilities represented
21 in that study?

22 **A.** No.

1 **Q.** You don't know, do you?

2 **A.** No.

3 MR. STAHL: Your Honors, I don't know what your
4 plans are. I probably have 45 minutes to an hour
5 left.

6 If you want to break, we can do that.
7 If you want to press on, we could do that, too.

8 JUDGE DOLAN: I think this might be a good time
9 to take a break.

10 So why don't we reconvene at 1:30 then.

11 (Whereupon, a luncheon
12 recess was taken to resume
13 at 1:30 p.m.)

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1 (Luncheon recess.)

2 CONTINUED CROSS EXAMINATION

3 BY

4 MR. STAHL:

5 Q. Mr. Lazare, let me just see if we can clear
6 up a couple of things from this morning. We were
7 talking about the Ameren cases in which you
8 participated as a staff witness. I asked you about
9 Sarbanes-Oxley costs in that case and I think you
10 said you couldn't recall whether the utilities had
11 requested recovery of Sarbanes-Oxley costs, do you
12 recall that?

13 A. I don't remember there being a specific
14 number that they asked for.

15 Q. But do you remember that in fact they were
16 seeking recovery of some Sarbanes-Oxley compliance
17 costs?

18 A. I don't remember.

19 Q. Let me -- you submitted both initial
20 testimony and rebuttal testimony in that case, did
21 you not, Docket 06-0070?

22 A. Yes.

1 **Q.** Let me show you what is a copy of your
2 rebuttal testimony in that case, Staff
3 Exhibit 17.0. And I'm going to direct your
4 attention specifically to Page 12, Line 279.

5 **A.** Yes.

6 **Q.** And that page in that line refers
7 specifically to a request having been made by
8 Ameren Witness Stafford for Sarbanes-Oxley costs,
9 correct?

10 **A.** Well, it doesn't indicate a specific amount
11 being requested.

12 **Q.** No, I understand, but they did request a
13 specific amount of some kind, didn't they?

14 **A.** Well, I think this might be analogous to
15 the first phase of this case when Com Ed cited
16 Sarbanes-Oxley, but did not provide a specific
17 number on the record that they requested in the
18 first phase. And I don't remember Mr. Stafford
19 putting a specific number on the record.

20 **Q.** Did staff or you, yourself, in discovery in
21 that case make any effort to determine the amount
22 of Sarbanes-Oxley compliance costs that Ameren was

1 seeking to, in your words, have their ratepayers
2 foot the bill for?

3 **A.** Where --

4 **Q.** You've used those words in this case in
5 your testimony. You think Com Ed --

6 **A.** Are you talking about my testimony in the
7 other case, too?

8 **Q.** Let me just go back and ask the question.
9 Did you make any effort to find out how much, in
10 terms of Sarbanes-Oxley costs Ameren was seeking to
11 recover from its customers?

12 **A.** I can't remember what my specific actions
13 were, but I think I looked at the numbers they
14 presented in support of their testimony -- their
15 proposed increase. And I don't remember there
16 being a specific number associated with
17 Sarbanes-Oxley. So if there is no number for
18 Sarbanes-Oxley, it's difficult to ask a data
19 request for support of that number.

20 **Q.** Did you ever ask them to identify what the
21 number was for Sarbanes-Oxley?

22 **A.** I wasn't trying to sort of, you know,

1 present their case for them, so I wasn't asking
2 them to support -- provide a number here. And I
3 thought, you know, if they had some specific cost
4 associated with Sarbanes-Oxley, that they would
5 have provided it. And as I said, I don't remember
6 them having provided any number associated with
7 Sarbanes-Oxley, so my assumption was that there was
8 not a cost to examine or address.

9 Q. You didn't ask them for their
10 Sarbanes-Oxley number, did you?

11 A. No.

12 Q. And since you didn't ask them for it, it is
13 also true, is it not, that you did not subject
14 whatever number Ameren was seeking to recover in
15 the way of Sarbanes-Oxley costs, to any test of
16 reasonableness, similar to that that you've applied
17 here for Com Ed's Sarbanes-Oxley costs, correct?

18 A. Are you talking about my tests or
19 Ms. Houtsma's tests?

20 Q. I'm talking about your test of disallowing
21 anything above one-tenth of 1 percent of revenues?

22 A. It's not my test, it's her test.

1 **Q.** She never suggested that anything above the
2 CRA average ought to be disallowed, did she?

3 **A.** She said -- the point -- she said this
4 was an issue of comparability based upon the
5 Charles River Associates study. So she said they
6 were comparable and the relevant figure from the
7 Charles River Associate study is the one-tenth of
8 1 percent of total revenues as a basis for
9 Sarbanes-Oxley costs. So I was just applying the
10 test that she referenced. I was not making up a
11 new test.

12 **Q.** Is it your practice to accept utility tests
13 for recovery of operating expenses, whatever they
14 suggest, you'll accept?

15 **A.** Well, if a company presents a test, throws
16 in a test and then they fail their own test, it
17 certainly raises questions in my mind.

18 **Q.** I'm not going to argue with you about
19 whether they established some sort of test or not
20 in Ms. Houtsma's testimony, I think her testimony
21 is clear on that point. Regardless of what you
22 might consider the Com Ed test to be, it is

1 correct, is it not, that you did not subject the
2 Ameren Sarbanes-Oxley costs to any test whatsoever,
3 did you?

4 **A.** When you say the Ameren Sarbanes-Oxley
5 costs, I'm not clear, because it's not clear to me
6 that they even presented any of those costs on the
7 record.

8 **Q.** Mr. Stafford referred to the fact that
9 Ameren was seeking to recover costs for complying
10 with Sarbanes-Oxley, as you testify in your
11 rebuttal testimony, correct?

12 **A.** If I understand his testimony correctly, he
13 was using that as a general argument in support of
14 their -- he was citing that, not the number per
15 se, but just the existence of this cost as an
16 argument for the overall increase in A and G
17 expenses. But I don't remember him identifying a
18 discrete Sarbanes-Oxley cost that the company
19 actually put into the post increase that they asked
20 the Commission to accept.

21 **Q.** Okay. You knew that they were seeking to
22 recover Sarbanes-Oxley as an element of their A and

1 G, correct?

2 A. It was not evident that they had identified
3 Sarbanes-Oxley as a discrete cost element for
4 recovery in the case.

5 Q. And you didn't ask them how much in the way
6 of Sarbanes-Oxley costs they were seeking recovery
7 of, did you?

8 A. This wasn't evidenced from the case,
9 whether they actually had a specific Sarbanes-Oxley
10 cost that they were seeking recovery from.

11 Q. That's not my question. My question is,
12 you never asked them whether they were seeking to
13 recover Sarbanes-Oxley cost as an element of their
14 A and G expenses, did you?

15 MR. FOSCO: I'm going to object to relevance. If
16 Ameren failed to meet their burden of proof, they
17 failed to meet their burden of proof. Staff
18 doesn't have an obligation to meet it for them. I
19 fail to see what that has to do with this docket.

20 JUDGE DOLAN: It's sustained, that objection.

21 BY MR. STAHL:

22 Q. One other question, a carry over from this

1 morning, Mr. Lazare, and that is on the question of
2 salaries and outside service expenses, do you still
3 have Exhibit 52.1 nearby?

4 A. Yes.

5 Q. And we talked about the employees that were
6 transferred from Com Ed in 2000 and 2004. Do you
7 recall that?

8 A. Yes.

9 Q. Do you know -- and by transferred, I mean
10 transferred to either Exelon or BSC, correct?

11 A. Yes.

12 Q. And do you know how many employees were
13 transferred from Com Ed to one of the Exelon
14 companies, in either of those years?

15 A. No.

16 Q. Do you recall that Ms. Houtsma testified in
17 an earlier portion of this case that in 2004, 436
18 employees were transferred from Com Ed to one of
19 the Exelon companies?

20 A. I don't remember the specific reference.

21 Q. Would you agree that the line item, outside
22 services, on Exhibit 52.1, would reflect

1 compensation paid to one or more of the Exelon
2 companies for services provided to Com Ed by those
3 former Com Ed employees?

4 **A.** Among other employees.

5 **Q.** Among other things, correct?

6 **A.** Yes.

7 **Q.** Do you know what the relative breakdown is
8 of that \$89 million in outside services between
9 services provided by individuals who were once Com
10 Ed employees and other costs?

11 **A.** No.

12 **Q.** All right, we're through with that, I
13 think, Mr. Lazare. Let's talk about healthcare
14 cost, this is the third element of the A and G
15 expenses that you challenge for Com Ed; is that
16 correct?

17 **A.** Yes.

18 **Q.** Now, just to be clear, Com Ed presented
19 evidence on rehearing as to two separate types of
20 healthcare costs, one for active employees and then
21 for retirees, correct?

22 **A.** Yes.

1 **Q.** And your testimony on rehearing questions
2 only the healthcare costs for active employees,
3 correct?

4 **A.** Yes.

5 **Q.** And your position on healthcare costs for
6 active employees is that the 88 percent increase
7 experienced by Com Ed over the four-year period in
8 question is greater than the 63 percent increase
9 for the same period shown by a sample of companies
10 in the Towers Perrin Study, correct?

11 **A.** Yes.

12 **Q.** And you asked the question at Lines 366 and
13 67 of your testimony, why Com Ed cannot keep up
14 with the average when it comes to controlling
15 healthcare costs, correct?

16 **A.** Yes.

17 **Q.** Now, again, you say at Lines 370 and 371 of
18 your rehearing testimony that it would be
19 unreasonable to ask Com Ed's customers to foot the
20 bill for this supposed greater than average cost,
21 unless Com Ed fully explains the disparity,
22 correct?

1 **A.** Yes.

2 **Q.** What is it that you would expect Com Ed to
3 explain here, would you expect them to explain
4 exactly what they spent the \$29.3 million on, is
5 that the explanation that you think would be
6 necessary?

7 **A.** Well, I think that it's a similar situation
8 to the Sarbanes-Oxley cost issue, where the Company
9 provides an exhibit in support of its argument that
10 healthcare costs are rising and then the
11 information from that exhibit provides an average
12 that's less than their increase. And given that
13 it's Company's own evidence, if they're not keeping
14 up with the averages, they have a higher than
15 average amount, I think they need to explain why
16 they are not able to keep pace with the average.

17 For example, if it was 5 times as much,
18 then obviously it would be more clear, but the fact
19 remains that if this is a supporting document
20 provided by the Company to justify -- to support
21 their healthcare numbers, then they, I think, would
22 be required to explain why their costs are higher.

1 **Q.** There are any number of reasons that a
2 company's costs would be higher than others in a
3 sample, would there not?

4 **A.** Yes.

5 **Q.** And many of those would have nothing to do
6 with being careless or imprudent or -- let's just
7 say careless or imprudent in how they spend their
8 healthcare dollars?

9 **A.** That's something for the Company to take
10 up. That would be speculation on my part.

11 **Q.** The active employee healthcare costs that
12 Com Ed is seeking to recover here are \$29.3
13 million, correct?

14 **A.** Yes.

15 **Q.** And again, you don't have any information
16 that would lead you to conclude that any of that
17 money was spent imprudently or unnecessarily in
18 terms of specific expenditures?

19 **A.** Again, the only piece of information
20 provided, to provide some indication about transit
21 healthcare costs, which was provided by the
22 Company, is a study. So that's the outstanding

1 piece of evidence in this case, regarding trends in
2 healthcare costs.

3 **Q.** What I think you just told me, that being
4 above average does not necessarily translate to
5 being imprudent or making unnecessary expenditures,
6 didn't you?

7 **A.** No, I said I don't know. When the Company
8 doesn't provide the information, it would be
9 speculation on my part to say it was prudent or
10 imprudent. I'm just saying when the only
11 information -- evidence put out by the Company is a
12 study, I think they have a responsibility to
13 explain why they can't keep up with others in terms
14 of healthcare costs.

15 **Q.** So they need to go look at all of the other
16 300 companies in these studies and do an analysis
17 about why those companies spent average or below
18 average and how they're different, is that the
19 burden that you think Com Ed has?

20 **A.** No, I think if the Company feels this study
21 is important enough to present as an exhibit in
22 this testimony, then I think it bears

1 responsibility to explain its relationship to the
2 other companies in the study that it provided.

3 No one asked Com Ed to provide this
4 study for this proceeding. They did it on their
5 own volition. So if that's the case, well, now
6 they've opened up the box, so to speak, in terms of
7 Com Ed's own evidence. And if there is a
8 discrepancy now, they have the responsibility of
9 explaining that discrepancy between their actual
10 costs and the evidence that they chose to provide.

11 **Q.** Did you determine whether Com Ed's
12 healthcare costs, the increase between 2000 and
13 2004 for retirees, was below average, average or
14 above average?

15 **A.** I did not examine those costs.

16 **Q.** You did not examine the healthcare costs
17 for retirees?

18 **A.** No.

19 **Q.** Why did you just choose active employees?

20 **A.** Because I think as we review the Company's
21 filing, there was sort of evidence that just jumped
22 out and indicated that there was something that was

1 inconsistent here. So this is a piece of evidence
2 that just seemed clearly inconsistent.

3 So it was, given the very short time
4 frame we had to testify in this rehearing process,
5 we didn't have the kind of -- the usual 4-month
6 period that you have in a normal rate case to do a
7 full -- more thorough investigation of retirees
8 healthcare costs. We were limited by time. These
9 were just, as we reviewed what Company provided,
10 they just clearly fell out.

11 **Q.** So it was a question of time, just didn't
12 have the time to calculate the increase in retiree
13 healthcare costs?

14 MR. FOSCO: I'm going to object to relevance,
15 your Honor. Staff has no duty to examine every
16 single issue in the case. I'm not sure where this
17 is going or how this is relevant in any way. It's
18 an issue that staff doesn't raise.

19 MR. STAHL: Because the evidence will show and
20 I'm about to get there, that healthcare costs
21 considered collectively for both active employees
22 and retirees, instead of just focusing on one

1 little narrow piece of it, when you consider it all
2 together, Com Ed is right at the average.

3 JUDGE DOLAN: We're going to overrule the
4 objection.

5 BY MR. STAHL:

6 Q. Mr. Lazare, you were presented evidence by
7 Ms. Houtsma that the 2000 retiree healthcare costs
8 were \$14.5 million, that's in her initial
9 examination, Exhibit 52.0 in this case?

10 A. Do you have a page number to cite to?

11 Q. Yes. Page 8, Lines 136 and 137.

12 A. What was your question again?

13 Q. The question is, she sets forth there in
14 three lines of her testimony, the 2000 retiree
15 healthcare costs of 14.5 million, correct?

16 A. Yes.

17 Q. The 2004 test year costs of 21 million,
18 correct?

19 A. Yes.

20 Q. And she even did the math for you, showing
21 that's an increase of \$6.5 million, correct?

22 A. Yes.

1 **Q.** And you could divide 6.5 by 14.5 and very
2 quickly determine that the percentage increase is
3 in Com Ed's retiree healthcare costs for the period
4 2000 to 2004, correct?

5 **A.** Yes.

6 **Q.** You could probably do that in your head and
7 tell us what that percentage is, couldn't you?

8 **A.** If you have a few minutes. Do you want me
9 to?

10 **Q.** Sure.

11 **A.** I would say it is about 43 percent.

12 **Q.** 43 percent. And you also had available to
13 you information from the Towers Perrin Study which
14 is Exhibit 52.5, information available to you on
15 Page 3 from which you could have calculated the
16 average increase in retiree healthcare costs period
17 2000 to 2004, correct?

18 **A.** Okay. Now --

19 **Q.** Page 3 of Exhibit 52.5.

20 **A.** Okay. And the retiree healthcare
21 information is broken up between those under 45 and
22 those over 45. But you could take the lowest

1 percentage on a year-by-year basis just to be
2 conservative and have done a calculation of what
3 the average increase for retirees would have been
4 in that 4-year period, couldn't you?

5 **A.** Yes, you could.

6 **Q.** You could take 17 percent for 2001,
7 13 percent for 2002, 17 percent for 2003 and
8 13 percent for 2004. And that, in fact, would
9 understate the cumulative increase for retirees for
10 that period, wouldn't it, if you took those
11 numbers?

12 **A.** What were the numbers again.

13 **Q.** 17 for 2001, 13 for 2002, 17 for 2003 and
14 13 for 2004.

15 **A.** What are you reading from a certain line
16 here?

17 **Q.** Retirees, under age 65, retirees age 65 and
18 older, under healthcare plans at the top of the
19 page.

20 **A.** Okay. You are taking the smallest number
21 for either category?

22 **Q.** Right. Just so that we're not accused of

1 overstating what the average increase will be, if
2 anything we'll understate it here.

3 **A.** Okay.

4 **Q.** Do you have a calculator? You could do
5 that pretty quickly figuring out what the
6 cumulative increase is for retiree using 17, 13,
7 17, 13?

8 **A.** I don't have a calculator.

9 **Q.** Would you accept that it's close to
10 69 percent?

11 **A.** Yes.

12 **Q.** So Com Ed, with respect to retirees,
13 increased only 43 percent, whereas an understated
14 average would show an increase of about 69 percent,
15 correct?

16 **A.** Yes.

17 **Q.** Com Ed did much better than average with
18 respect to retiree healthcare costs from 2000 and
19 2004, did it not?

20 **A.** Yes.

21 **Q.** And if you looked at the retirees and the
22 active employees on a consolidated basis, you had

1 information available to you from which you could
2 have concluded that on a combined basis Com Ed's
3 healthcare costs in 2000 were \$29.5 million, active
4 employees and retirees, and all that information is
5 set forth on Page 8 of Ms. Houtsma's testimony,
6 correct?

7 **A.** Page 8 of?

8 **Q.** Her initial testimony, Exhibit 52.0?

9 **A.** Explain one more time what your question
10 is.

11 **Q.** The question is the information was
12 available to you from which you could have
13 concluded or calculated that Com Ed's total base
14 year healthcare costs for active employees and
15 retirees was \$29.5 million, consisting of
16 \$15 million for active employees and \$14.5 million
17 for retirees?

18 **A.** If that is the way you wanted to -- if you
19 wanted to take two accounts and choose to look at
20 them collectively, that is how you would do it.
21 It's not clear to me that I would necessarily want
22 to just look at them collectively versus

1 individually.

2 **Q.** Well, but your testimony in your rehearing
3 testimony is that Com Ed has not explained why it
4 cannot control healthcare costs, generally. That's
5 what you say in your testimony and that's why I'm
6 looking at this on a consolidated basis.

7 **A.** Do you have a cite to that?

8 **Q.** Yes, just give me a second. You say at
9 Lines 365, 66 and 67 that, and I'll quote, the
10 question not answered by Ms. Houtsma is why Com Ed
11 cannot keep up with the average when it comes to
12 controlling healthcare costs. You say that in your
13 testimony?

14 **MR. FOSCO:** Your Honor, I'm going to object.
15 Counsel has been doing this all afternoon,
16 mischaracterizing the witness' testimony. His
17 whole testimony on this point is healthcare costs
18 for active employees, he never addressed healthcare
19 costs for retirees. And for him to make this
20 improper innuendo, he didn't state that.

21 **MR. STAHL:** It's not innuendo. I'm quoting the
22 witness' testimony in which he says that Com Ed has

1 not shown why Com Ed cannot keep up with the
2 average when it comes to controlling healthcare
3 costs. It doesn't say employees' healthcare costs
4 or a segment of healthcare costs, it says
5 healthcare costs.

6 And what I'm trying to show here is that
7 in fact when you look at healthcare costs, which is
8 the phrase Mr. Lazare refers to at Line 367, the
9 evidence will show that Com Ed has in fact kept up
10 with the average.

11 MR. FOSCO: With all due respect, counsel's
12 treatment of Mr. Lazare's testimony is not fair, he
13 knows it. Mr. Lazare's testimony came up, when it
14 spoke about specific active healthcare costs in
15 context of the discussion. Yes, the word in that
16 discussion said healthcare costs, it doesn't use
17 the word active. I don't understand why we're
18 spending time doing this. Mr. Lazare isn't
19 testifying about retirees healthcare costs.
20 Although Mr. Lazare, when asked, he didn't
21 understand why you would group them together. He
22 didn't talk about.

1 JUDGE DOLAN: We're going to overrule the
2 objection.

3 BY MR. STAHL:

4 Q. Mr. Lazare, if you wanted to determine
5 whether Com Ed was keeping up with the average and
6 controlling healthcare costs, you would look at
7 this on a combined basis so that you capture all
8 healthcare costs, wouldn't you?

9 A. I thought I made it pretty clear in my
10 testimony that this was solely healthcare costs
11 related to active employees. If you go back to my
12 initial discussion --

13 Q. That is not my question, Mr. Lazare. That
14 is not my question. We can all read your
15 testimony.

16 A. I understand. But in each of these phrases
17 it's clearly the healthcare costs for active
18 employees. If you're trying to suggest that I'm
19 trying to bring retiree healthcare costs into this
20 discussion when there is no mention of it
21 previously, I mean you're really -- you're just
22 interpretation, it just doesn't --

1 **Q.** You think that's unfair?

2 **A.** You know, I don't want to characterize why
3 you're doing this, but I mean it's just pretty
4 obvious that I'm referencing healthcare costs for
5 active employees.

6 **Q.** Have you made the calculation what the Com
7 Ed increase in healthcare costs collectively was
8 between 2000 and 2004? And I'm not asking you
9 whether you did it here today, I'm asking you
10 whether at any time during preparation for your
11 rehearing testimony you calculated what the Com Ed
12 increase was for healthcare costs collectively?

13 **A.** No, I have not.

14 **Q.** You have not. Could easily be done,
15 though, based on the information set forth in
16 Ms. Houtsma's testimony, couldn't it?

17 **A.** I guess, yes.

18 **Q.** Would you, since you would disallow the
19 above average costs for active employees, the
20 difference between 63 percent and 83 percent, do
21 you think that for retirees Com Ed ought to be
22 allowed to recover the 69 percent average instead

1 of the only the 43 percent that it experienced?

2 **A.** Well, I would say in each case, if the
3 Company wants recovery of certain costs, it has to
4 provide a basis, a reason why it would be
5 appropriate to recover certain costs from
6 ratepayers. Whether above the average for active
7 employees or if they want it reduced from below the
8 average to the average for retirees, well, now, it
9 would be up to Company witnesses to provide an
10 explanation why that would be reasonable.

11 I don't see anything -- none of this is
12 on the record before the Commission, there is no
13 argument being made, to my knowledge, by Ms.
14 Houtsma and Ms. Case that the healthcare costs for
15 retirees should be ratcheted up to the average. If
16 she did make an argument, then I would take a look
17 at it and see if it is reasonable.

18 **Q.** Well, she's not making an argument one way
19 or the other, but she's presenting evidence and
20 testimony.

21 Let me ask you this: If I were to
22 suggest to you that it would be a fair and

1 symmetrical rate making treatment that if costs
2 above average were going to be disallowed, then
3 costs below average ought to be brought up to the
4 average to provide fair and symmetrical treatment.
5 Would you agree with that as a ratemaking
6 principle?

7 **A.** It would depend on the specific evidence
8 for these two adjustments that you're talking
9 about.

10 **Q.** What about in this particular case, do you
11 think that would be fair and reasonable as a matter
12 of first ratemaking principles that if you're going
13 to disallows above average costs for active
14 employees you ought to bring retirees up to the
15 average?

16 MR. FOSCO: Objection, asked and answered. The
17 witness indicated that he would have to see
18 whatever evidence to support it, there is none.

19 JUDGE DOLAN: Sustained.

20 BY MR. STAHL:

21 **Q.** What evidence would you need to see in that
22 regard?

1 MR. FOSCO: Objection, these are adjustments that
2 aren't being made, there is no context to this
3 issue. Asking the witness what evidence he would
4 like to see on retiree healthcare costs strikes me
5 as totally irrelevant because this witness didn't
6 testify about that cost at all and there is no
7 adjustment.

8 MR. STAHL: That's precisely the problem, he
9 didn't testify about it. He is slicing and dicing
10 healthcare costs in a way that is ignoring.

11 JUDGE DOLAN: We're going to sustain the
12 objection, Counsel. I think you've made your
13 point.

14 BY MR. STAHL:

15 **Q.** Do you know, Mr. Lazare, whether healthcare
16 plans for retirees can be administered separately
17 from healthcare plans for active employees?

18 **A.** I am not familiar with the rules.

19 **Q.** Do you know, just going back to the Towers
20 Parent Study for a minute and the 63 percent
21 average for active employees, do you know whether
22 any of the companies represented in that survey

1 experienced a reduction in work force during the
2 2000 to 2004 time period?

3 **A.** Well, I see Ameren UE, I would guess that
4 they had a reduction in work force. Anderson
5 Corporation, that's the consulting firm.

6 **Q.** I don't think Anderson was Arthur Anderson,
7 LLP, if that's what you're suggesting.

8 **A.** AT&T, I believe has had work force
9 reductions.

10 **Q.** What page are you reading from there?

11 **A.** 18. I don't think the Boy Scouts of
12 America have been laying people off.

13 **Q.** There are over 300 companies that
14 participated in this study, were there not, or at
15 least who provided data for the company?

16 **A.** 383.

17 **Q.** You don't know how many of those may have
18 experienced reductions in work force and how many
19 did not, do you?

20 **A.** No.

21 **Q.** That would be likely to affect the
22 63 percent average, would it not?

1 Maybe I can withdraw that question and
2 try and speed this up a little bit, if that can be
3 helpful. Do you know, Mr. Lazare, the extent to
4 which smaller work forces for any of the companies
5 represented in this survey may have decreased the
6 average 63 percent healthcare cost increase?

7 **A.** No.

8 **Q.** Is it fair to say that the companies in
9 this survey may have experienced a 63 percent
10 increase, in part, at least, because of smaller
11 work forces rather than their greater ability than
12 Com Ed to control healthcare costs?

13 **A.** I don't know.

14 **Q.** You do know this, that Com Ed's 88 percent
15 increase in active employee healthcare costs does
16 make adjustments for the smaller work force that
17 Com Ed had in 2004 versus 2000, correct?

18 **A.** Yes.

19 **Q.** I'm going to turn now to G and I plant
20 allocation. And is it still your position,
21 Mr. Lazare, that about a \$304 million adjustment
22 ought to be made to general and intangible plant?

1 **A.** Yes.

2 **Q.** And this is an issue on which the

3 Commission ruled against your position in the order

4 entered into July, correct?

5 **A.** Yes.

6 **Q.** You, I say you, but staff collectively has

7 not presented any new facts to the Commission in

8 connection with this recommended \$304 million

9 adjustment, correct?

10 **A.** Correct.

11 **Q.** Essentially what the staff's position here

12 is is that this Company's testimony didn't

13 establish what it needed to establish and

14 essentially argued that the Commission's order was

15 wrong, correct?

16 **A.** Yeah, I also stated that the company --

17 the Commission's orders puts the onus on staff.

18 **Q.** The Commission was wrong in doing what it

19 did?

20 **A.** Yes.

21 **Q.** And you know that IIEC and CES have filed

22 petition's for rehearing on this issue, correct, on

1 the adjustment to general and intangible plant?

2 A. I think CUB also.

3 Q. Well, I'm not sure, I thought it was only

4 the two. I don't mean to leave CUB out.

5 Regardless of who filed, no one, whether it be CUB.

6 IIEC or CES has presented any new facts or evidence

7 to the Commission, correct?

8 A. No.

9 Q. They have not presented any facts, correct?

10 A. Correct.

11 Q. And if I understand what you're saying, is

12 that because this \$304 million of investment had

13 been included by the Commission in the order in

14 01-0823 and Com Ed is seeking to retire this

15 amount, the Commission ought to continue following

16 the order that it entered into whenever that order

17 was entered, in 2003, I guess?

18 Is that your position that this amount

19 had already been excluded by the Commission on a

20 prior order and the Commission, therefore, should

21 not depart from that order?

22 A. That's only part of it.

1 **Q.** What is the other part of it?

2 **A.** That the Company has not provided any
3 evidence to justify changing the Commission
4 decision from the prior case.

5 **Q.** You, yourself, in answering one of
6 Mr. Townsend's questions this morning have
7 recognized the facts have changed since that
8 offered was entered?

9 **A.** Facts have changed.

10 **Q.** Yes. I think you mentioned, for example
11 that Com Ed's production plant has been
12 transferred, in part, to Midwest Generation?

13 **A.** Since when?

14 **Q.** I thought you said since that order was
15 entered.

16 **Q.** If I misunderstood you, that's fine

17 **A.** Okay.

18 **Q.** The recommendation that you made in 01-0423
19 was based on use of a general labor allocator of
20 62.8 percent to production, correct?

21 **A.** I'll accept that.

22 **Q.** If you'd like to check it, it's your

1 rebuttal testimony in that document, Staff

2 Exhibit 21, Schedule 21.2.

3 **A.** Okay.

4 **Q.** The use of that allocator, assumed, did it
5 not, that general and intangible plants, assets and
6 rate based were using 62.8 percent for production?

7 **A.** Yes.

8 **Q.** And use of that allocator resulted in the
9 allocation of about \$775 million of general and
10 intangible plants to production; is that correct?

11 **A.** Sounds right.

12 **Q.** And conversely contributed to the
13 allocation away from distribution of general and
14 intangible plant, correct?

15 **A.** Contributed to the?

16 **Q.** Yeah, in other words, if it is allocated to
17 production there would have to be a reduction in
18 the amount of plant that went to distribution?

19 **A.** There was no reduction, it was -- it wasn't
20 reduced from anything. What was it reduced from?
21 I'm not clear.

22 **Q.** It has to be allocated -- if it's allocated

1 to production then a smaller amount will go to
2 distribution, correct?

3 **A.** Right, but the work reduction assumes that
4 distribution previously had a higher amount, but no
5 reduction took place.

6 **Q.** If it goes to production it can't go to --
7 there is a fixed amount of plant, correct, a
8 general and intangible?

9 **A.** Correct.

10 **Q.** There is about a billion two at the time,
11 do you recall that?

12 **A.** That sounds correct.

13 **Q.** And the more that goes to production, the
14 less that will then go to other company functions,
15 correct?

16 **A.** Correct.

17 **Q.** Now, of that \$775 million general and
18 intangible plant that was allocated to production,
19 you saw that when the transfer was actually made,
20 only about \$166 million of plant was transferred,
21 of general and intangible, was transferred from Com
22 Ed to Exelon?

1 **A.** That was all that -- not a state of
2 balances that Com Ed put on its Exelon bill.

3 **Q.** That was original cost, was it not?

4 **A.** I believe so.

5 **Q.** Far less than the \$775 million that had
6 been allocated to production by the use of the
7 labor allocator, correct?

8 **A.** Yes.

9 **Q.** And you agree that as of year end 2004, Com
10 Ed has no production plant that it is seeking to
11 include in rate base in that case, correct?

12 **A.** I hope not.

13 **Q.** Well, to the best of your knowledge that is
14 true, is it not?

15 **A.** Yes.

16 **Q.** It is certainly true that the Com Ed assets
17 for which it seeks inclusion in this case are not
18 using 62.8 percent for production?

19 **A.** Com Ed assets for which -- which assets
20 are you talking about?

21 **Q.** Any assets that is seeking inclusion in
22 this rate base, none of those assets are using

1 62.8 percent or any other percentage for
2 production, correct?

3 **A.** Well, that is an issue with this case with
4 respect to G and I plant.

5 **Q.** I think you just told me that Com Ed is not
6 seeking in this case to include any production
7 plant or rate base, didn't you just tell me that?

8 **A.** No.

9 **Q.** You think there is some production plant
10 that Com Ed is seeking to include in rate base?

11 **A.** I think this issue of \$304 million is an
12 issue of G and I plant. Like it determined was
13 related to production, Com Ed is now seeking to
14 place in rate base for this case.

15 **Q.** Quite simply, Mr. Lazare, that reduction of
16 \$405 million was based on the application of labor
17 allocated of 62.8 percent, that, as the facts
18 developed, it turned out vastly overstated the
19 amount of Com Ed general and intangible plant
20 attributable to production; isn't that a fact?

21 **A.** No, it's not.

22 **Q.** Just so we're clear, the general labor

1 allocator resulted in \$775 million of G and I plant
2 being allocated to production, correct?

3 A. Yes.

4 Q. As the time came to transfer that G and I
5 plant to Exelon from Com Ed, it turned out to be
6 about \$166 million, correct?

7 A. That was the Company's independent decision
8 that was not ever specifically ratified by the
9 Commission.

10 Q. Because it was never challenged by anyone
11 either, including staff, correct?

12 A. It was certainly challenged by staff when
13 the tried to bring it in for purposes of setting
14 rates.

15 Q. The Company acknowledged in a filing to the
16 Commission, when this transfer was made, that it
17 was transferring \$166 million of general and
18 intangible plant to Exelon, correct?

19 A. Yes.

20 Q. And nobody challenged in any way that
21 filing or those conclusions or those assertions or
22 anything else?

1 **A.** Commission never addressed those balances
2 in its decision, it was not part of the subject for
3 the Commission to rule on.

4 **Q.** But my question was not whether the
5 Commission -- whether it ruled on anything, but
6 whether anyone alleged that assertion at
7 \$166 million was the plant that was being
8 transferred?

9 **A.** Well, I can tell you -- cannot tell you
10 specifically, because I was not a participant in
11 that particular case when that transfer was made.

12 **Q.** Now, you have specifically acknowledged in
13 response to discovery in this case, that you cannot
14 identify general plant proposed for inclusion in
15 Com Ed's rate base that is not used to support the
16 distribution function or the customer function;
17 isn't that true?

18 **A.** Yes.

19 **Q.** And you testify and specifically
20 acknowledged in this case that you cannot identify
21 any intangible plants which Com Ed seeks to include
22 in rate base that is not used to support either the

1 distribution or customer function, correct?

2 **A.** Correct.

3 **Q.** Which of the \$304 million that you are
4 seeking an adjustment for is plant that supports a
5 production function? You can't identify any, can
6 you?

7 **A.** Consistent with the commission decision in
8 01-0423, they had two choices, whether to just do a
9 general labor allocator or to do an asset by asset
10 on functionalization. Commission in this case and
11 in a number of other cases felt that the general
12 allocator was more appropriate and by definition
13 when you use a general allocator you don't identify
14 specific assets.

15 **Q.** If you would just assume for me for a
16 minute that the use of that general labor allocator
17 overstated the general and intangible plant
18 attributable to production by about \$600 million or
19 about 70 percent. And I remember you may not agree
20 with that, but if you assume that would be the
21 same, you would agree that the Commission's order
22 in 01-0423 are based on facts that are no longer

1 true and correct?

2 MR. FOSCO: Your Honor, I think I'm going to
3 object because I'm not sure how this line of
4 questioning ties to Mr. Lazare's testimony on
5 rehearing. As Mr. Stahl established at the
6 beginning of the cross, Mr. Lazare didn't introduce
7 any new factual analysis and basically just
8 restated his basic position which was in the
9 original case.

10 And I don't believe the original
11 case -- I don't think we are allowed to cross
12 parties under original testimony. And if that's
13 what we're doing, I guess we ought to establish
14 that, but I'm not sure, unless he can explain. I'm
15 not sure that I see this relating to any specific
16 testimony and his testimony on the hearing.

17 MR. STAHL: Well, I think it's clear that the
18 witness is basing a principal part of his
19 recommendation on the Commission order in 01-0423,
20 as well as some perception that the Company hasn't
21 introduced evidence to justify departure from that
22 order. And I certainly disagree with that, as

1 Mr. Hill has explained in his testimony.

2 But nonetheless, what I'm trying to
3 point out now is that that order was based on facts
4 and circumstances that turned out to be incorrect.
5 Because it was based on the use of a general labor
6 allocator, that allocated 67 percent plus plant
7 production that resulted in a \$775 million to
8 production. And when the time came, only
9 \$166 million of plant was transferred to the
10 production company, Exelon.

11 I think that shows, and I know
12 Mr. Lazare tends to disagree with that, that
13 finding or that transfer was never challenged, I
14 think, by anybody. It's vastly inconsistent with
15 the use of the general labor allocator. The order
16 in 01-0423 is therefore based on application of a
17 base allocator that circumstances and facts have
18 shown was inaccurate.

19 And if staff is going to justify its
20 position here, based simply on an order that it may
21 or may not have any factual basis for it, that is
22 what I would like to know.

1 MR. FOSCO: Your Honor, I won't agree with
2 Mr. Stahl's argument, but that is not the point of
3 my objection. The point is if this was an argument
4 that they wanted to make, they could have made this
5 argument during Mr. Lazare's cross. That opens up
6 the door to this line of cross, is my point.

7 JUDGE DOLAN: We'll sustain the objections.

8 BY MR. STAHL:

9 Q. Mr. Lazare, are there any written
10 guidelines or procedures at the Commission that
11 instruct staff when it should be bound by prior
12 Commission orders and when it's free to depart from
13 prior Commission orders?

14 A. Not to my knowledge.

15 Q. In this case, you feel that you would like
16 to follow a prior Commission order, correct?

17 A. Not necessarily.

18 Q. You are following a prior Commission order?

19 A. But I don't feel bound to follow the
20 Commission order. I think it's a matter of it's up
21 to the Company. If the Commission ruled one way
22 for 2000 test year plant, the point the Company

1 wants to now go in and change naturalization to
2 that plant, it's their responsibility to present an
3 argument why previous functionalization was wrong
4 and is wrong.

5 And when the Company doesn't form that
6 basic necessary stuff, well, then, I find no basis
7 to conclude that or any deviation from the previous
8 Commission discussion with respect to this 2000
9 test year.

10 **Q.** That is not an approach that you followed
11 in the Ameren case this year, is it, with respect
12 to A and G costs specifically?

13 **A.** With respect to A and G costs, I
14 examined -- I looked at the costs associated with
15 their proposed increase and I found what I thought
16 was a discrepancy in a key component of costs were
17 functionalized between -- to the regulated
18 utilities. And I, in fact, invoked the allocations
19 from the labor allocator and the previous round of
20 cases to recommend a downward adjustment for A and
21 G expenses for Ameren CIPS and Ameren SILCO.

22 And that case -- the ALJ's, in that

1 case, supported my adjustment. So in the sense you
2 could very well argue that the principles of the
3 general allocator from the previous rounds of
4 Ameren DST cases provided a foundation for my
5 adjustment of A and G costs for both Ameren CIPS
6 and Ameren SILCO.

7 Q. In that case CIPS and SILCO and IP came in
8 with requests for increases in A and G costs,
9 anywhere between 60 percent in the case of CIPS, up
10 to over 50 percent in the case of SILCO, correct?

11 A. Yes.

12 Q. And you said there was a previous order in
13 an Illinois Power case in Docket 01-0432, if
14 applied, would limit the A and G increase for all
15 three of those companies to increases in the range
16 of 11, 12, and 13 percent, correct?

17 A. Yes.

18 Q. And in your initial you departed from that
19 Commission order in 01-0432 and said I am going to
20 apply an allocator instead. And as a result of
21 that allocator that you applied, instead of
22 recommending for those companies in the 11, 12 and

1 13 percent range, you made a recommendation that
2 says CIPS ought to get 22 percent and SILCO ought
3 to get 12 percent and Illinois Power, we'll give
4 them the same percent we give SILCO, right? That's
5 what you said in your initial testimony, correct?

6 **A.** Yes.

7 **Q.** And then -- and you acknowledged in that
8 initial testimony that that was a much more modest
9 adjustment than would be appropriate under a prior
10 Commission order, referring to that order in the IP
11 case, Docket 01-0432, correct?

12 **A.** Correct.

13 **Q.** And in fact that was your methodology that
14 had been applied in 01-0432, wasn't it?

15 **A.** Yes.

16 **Q.** And that had been approved by the
17 Commission and that decision had been affirmed by
18 the Appellate Court?

19 **A.** Yes.

20 **Q.** And you took it upon yourself to depart
21 from the order in that case and give the utility
22 far more than would have been justified under that

1 approach, correct?

2 A. Yes.

3 Q. Nobody suggested in that case that the
4 order in 01-0432 was no longer a good order or a
5 valued order, it was somehow based on an obsolete
6 methodology, you didn't suggest that, did you?

7 A. No.

8 Q. Mr. Lazare, a question from this morning,
9 production and supply are two different functions,
10 correct? And again, I thought I heard you say that
11 in response --

12 A. They are not necessarily the same thing.
13 You know, if your supply function is buying from
14 other suppliers, if you are buying from the
15 producers it's different than being the producer
16 itself. But on the other hand, if have you a
17 production function, then that could be considered
18 your supply function as well.

19 Q. Production kind of implies you only
20 actually make the energy?

21 A. Right.

22 Q. And we know Com Ed doesn't have those?

1 **A.** Correct.

2 **Q.** Supply could be procurement from third
3 parties who themselves generate it?

4 **A.** It could be also production or procurement.
5 I would say it is a more general term.

6 **Q.** Supply in Com Ed's?

7 **A.** No.

8 **Q.** And you cannot identify any supplier
9 related assets that Com Ed seeks to include in rate
10 base that anywhere near approaches \$304 million,
11 correct?

12 **A.** Well, since I have denied supply, it is
13 also including the term production. And because
14 I'm arguing that that \$304 million is related to
15 the production function that has been diverted,
16 then I am in fact arguing that \$304 million in
17 supply related to production that has been
18 divested, or sold, Company is seeking to collect in
19 a rate base.

20 **Q.** Do you know what Com Ed's procurement
21 related costs are in 2004?

22 **A.** Well, they had a full requirement contract

1 with Exelon for their power and energy. And I
2 would say that 3.3 or \$3.4 billion, perhaps, in
3 such costs.

4 Q. Let's just talk about the Com Ed costs that
5 it incurs in connection with arranging supply, the
6 procurement staff, the supply staff. Do you know
7 what those costs are?

8 A. I would expect they are pretty minimal just
9 because it's a full requirements contract from
10 Exelon and Exelon basically does all the leg work.
11 Arranging the power and energy.

12 Q. Do you know how big the Com Ed procurement
13 staff is, how many people?

14 A. Do I know?

15 Q. Yes, sir.

16 A. No.

17 Q. And when you say pretty minimal, are you
18 able to quantify it to any greater degree than
19 that?

20 A. No.

21 Q. Is it less than a million dollars, do you
22 think?

1 **A.** I already said I don't know.

2 **Q.** I was just trying to suggest something to
3 you, it's cross examination.

4 MR. STAHL: May I just have 30 seconds?

5 JUDGE DOLAN: Sure.

6 MR. STAHL: I have nothing further, thank you.

7 MR. FOSCO: Can we have just 1 minute or maybe
8 two?

9 (Break taken.)

10 JUDGE DOLAN: Back on the record.

11 REDIRECT EXAMINATION

12 BY

13 MR. FOSCO:

14 **Q.** Mr. Lazare, you recall that Mr. Stahl asked
15 you a question regarding Com Ed Exhibit 52.1 and
16 whether that exhibit presented what, I think as
17 Mr. Stahl put it, the Commission wanted to see on
18 the rehearing?

19 **A.** Yes.

20 **Q.** And do you recall that you answered in your
21 opinion it did not?

22 **A.** Yes.

1 **Q.** Can you explain why you believe
2 Exhibit 52.1 did not provide what the Commission
3 was looking for on rehearing?

4 **A.** Yes. If you look at the areas adjustments
5 contained in that exhibit, if you go to Columns N,
6 O and P, you'll see that in contrast to the
7 \$79 million in upward adjustment that I discussed
8 and explained in Ms. Houtsma's testimony, you'll
9 find a magnitude of even larger amounts of
10 adjustments that are not explained between Columns
11 N and P.

12 For example, combines accounts 920 and
13 921, after the two initial adjustments for salary
14 and wage increase and Exelon way severance, they
15 get to a level of 114.86 million, yet the final
16 total that they're -- is an element in their post
17 level of 255.7 million, the 67.3 million. So there
18 is a difference there of \$47 million that is not
19 explained in the direct or rebuttal testimony of
20 Ms. Houtsma. So there is no basis on the record to
21 determine whether that was -- that adjustment was
22 reasonable or not.

1 And then if you go to, for example,
2 Account 923, the adjustments she does discuss are
3 in Columns J, K, L and M, which come to about
4 \$38 million. But then when you go to Column N to
5 Column P, you have an adjustment, upward
6 adjustment, of \$48 million, that, again, is not
7 discussed in her direct or rebuttal testimony.

8 And as you go down that column, you'll
9 see other adjustments that again are not the
10 subject of her adjustments -- of her testimony, so
11 the problem is a lot of the process by which she
12 gets to her final proposed A and G level that she's
13 recommending the Commission to accept in this case,
14 there is just a large part of the story that's not
15 being told. And so that's why I don't think the
16 company has lived up to or fulfilled the
17 requirement laid out by the Commission in accepting
18 this proposal for rehearing.

19 **Q.** Do you recall that Mr. Stahl asked you some
20 questions about the Sarbanes-Oxley costs?

21 **A.** Yes, I do.

22 **Q.** Do you recall that he asked you a question

1 about Ms. Houtsma's proposal to use 5.8 billion as
2 revenues, instead of 1.7 billion to come up with a
3 new estimate of Sarbanes-Oxley cost?

4 **A.** Yes.

5 **Q.** And you recall that you indicated that you
6 did not agree with her use of the 5.8 billion in
7 revenues?

8 **A.** Yes.

9 **Q.** Can you explain why?

10 **A.** The 1.7 billion is the amount of revenues
11 associated with delivery services. If she's
12 seeking to base Sarbanes-Oxley on 5.8 billion,
13 well, that includes a large chunk of cost
14 associated with supply.

15 And then the question would be, why
16 should Sarbanes-Oxley costs associated with supply
17 be allocator with delivery service customers who
18 don't receive supply and only delivery services.
19 Why should they be required to pay a share of
20 Sarbanes-Oxley costs associated with the billions
21 of dollars of revenues that are not delivery
22 services related.

1 MR. FOSCO: Your Honor, we have no further
2 redirect.

3 JUDGE DOLAN: Any recross?

4 RECROSS EXAMINATION

5 BY

6 MR. STAHL:

7 Q. Just very briefly. Mr. Lazare, you profess
8 some confusion about what is on 52.1 in this Column
9 N in particular?

10 MR. FOSCO: Object to the use of the word
11 confusion.

12 BY MR. STAHL:

13 Q. Well, uncertain about what this means. Is
14 that what I heard you say?

15 A. No, I'm just saying it wasn't explained, it
16 wasn't justified.

17 Q. Does that mean you don't know what it is?

18 A. What it means is that they have not
19 provided sufficient evidence to justify the figures
20 in the final column of that exhibit.

21 Q. Column P?

22 A. Yes.

1 **Q.** And that's because you don't know what's in
2 Column N, is that what I heard you testify to?

3 **A.** That -- well, the costs associated with
4 the adjustments, which I guess Column N is supposed
5 to represent, are not discussed or explained in
6 testimony.

7 **Q.** The fact, Mr. Lazare, that all of those
8 adjustments were explained in Ms. Houtsma's
9 testimony in prior versions -- in the prior phase
10 of this case, were they not?

11 **A.** I don't see any reference there.

12 **Q.** You participated in this whole case,
13 haven't you?

14 **A.** Yes.

15 **Q.** You know what these numbers are. Let me
16 ask you this, did you ever suggest when you got
17 this exhibit that some sort of data request be sent
18 to the Company so you could have a better
19 understanding of what these numbers were?

20 **MR. FOSCO:** I'm going to object. I don't see the
21 relevance of that. The testimony he just gave on
22 redirect was what was in the record to the

1 Commission. And whether we did discovery on it, I
2 don't see how that is relevant.

3 JUDGE DOLAN: All right, we'll sustain.

4 MR. STAHL: I have no further questions, but
5 Ms. Houtsma will be here and she can explain where
6 all this information is in the record. And it's
7 unfortunate that we've come to this point, so I
8 guess we have. So I have no further questions.

9 JUDGE DOLAN: Thank you.

10 All right, next we have Ms. Houtsma.

11 MR. STAHL: And -- yes. And Ms. Houtsma was here
12 and I believe was sworn in this morning.

13 JUDGE DOLAN: Proceed.

14 MR. STAHL: Com Ed calls as its next witness
15 Katherine M. Houtsma.

16 (Witness previously sworn.)

17 (Whereupon, Com Ed Exhibits Nos. 52.0
18 and 59.0 were marked for
19 identification as of this date on
20 e-docket.)

21

22

1 KATHERINE M. HOUTSMA,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY

6 MR. STAHL:

7 Q. Ms. Houtsma, you've already been sworn. I
8 would like to direct your attention to what has
9 been marked Com Ed Exhibit 52.0 corrected. Can you
10 identify that as the direct testimony on rehearing
11 of Katherine M. Houtsma?

12 A. Yes.

13 Q. And was this prepared by you or under your
14 supervision or direction?

15 A. Yes, it was.

16 Q. Do you have any changes that you would like
17 to make to this testimony at this time?

18 A. No.

19 Q. Now, Ms. Houtsma, I will direct your
20 attention to what has been marked as Com Ed
21 Exhibit 59.0 and ask you if you can identify this
22 as the rebuttal testimony on rehearing of one

1 Katherine M. Houtsma?

2 A. Yes.

3 Q. And was this also prepared by you or under
4 your supervision or direction?

5 A. Yes.

6 Q. And do you have any changes that you would
7 like to make to this testimony an at this time?

8 A. No.

9 MR. STAHL: Thank you. Your Honor, at this point
10 I would tender Exhibits 52.0 and 59.0 with
11 attachments into evidence. And Ms. Houtsma is
12 available for cross examination.

13 JUDGE DOLAN: Any objections?

14 MR. GARG: I believe there is also an
15 Exhibit 59.0.

16 JUDGE DOLAN: You just said with attachments, as
17 opposed to listing.

18 MR. STAHL: Yeah, I could identify, there is 52.0
19 with attachments, which I believe are 52.1 through
20 52.15. And then 59.0, which includes attachments
21 59.1 and 59.2.

22 MR. GARG: No objection.

1 JUDGE DOLAN: With that, then, Exhibit No. 52.0
2 corrected and attachments 52.1 through 52.15. And
3 59.0 along with 59.1 and 59.2 will be admitted into
4 the record.

5 (Whereupon, Com Ed
6 Exhibits Nos. 52.0 and 59.0 were
7 admitted into evidence as
8 of this date.)

9 MR. STAHL: Thank you.

10 CROSS EXAMINATION

11 BY

12 MR. GARG:

13 Q. Good afternoon, Ms. Houtsma, my name is
14 Rishi Garg and I work for the Attorney General's
15 Office and I have just a very few questions for you
16 this afternoon.

17 A. Okay, good afternoon.

18 Q. And they all pertain to your rebuttal
19 testimony on rehearing, that's your Exhibit 59.0 on
20 Page 22?

21 Q. And all of my questions have to do with the
22 graphic on Page 22, Lines 460 to 461.

1 **A.** Okay.

2 **Q.** At Lines 460 to 461, you show the financing
3 costs associated with each of the three
4 alternatives for treatment of the pension
5 contribution, correct?

6 **A.** Correct.

7 **Q.** And the financing costs shown there are
8 annual costs, correct?

9 **A.** Correct.

10 **Q.** The pension contribution was financing --

11 **A.** Well, can I just correct that. To be clear
12 there, they are annualized, as opposed to annual.

13 **Q.** Okay, now, the first line that says cost of
14 financing the contribution, would you refer to
15 those as annual costs?

16 **A.** I would refer to them as annualized.

17 **Q.** Okay, that's fine. To go on, the pension
18 contribution was financed in March of 2,2005,
19 correct?

20 **A.** Correct.

21 **Q.** So the full annual financing cost was not
22 incurred in 2005; is that correct?

1 **A.** The contribution was incurred in 2005, and
2 this reflects the costs that were established in
3 2005.

4 **Q.** And was it an annual financing cost?

5 **A.** Well, I guess to be clear these are
6 alternatives, the last three columns are
7 alternatives. So none of them really reflect the
8 actual costs that were incurred in 2005.

9 **Q.** Say that again?

10 **A.** The costs shown on the first line are
11 alternatives that we presented, none of them
12 actually reflect the actual costs that Com Ed
13 incurred in 2005. So they reflect sort of
14 different scenarios, what we might have incurred in
15 a different scenario.

16 **Q.** Okay. I'm asking you with respect to the
17 line that's titled reduction in expenses due to
18 contribution.

19 **A.** Okay, and my comment has to do with the
20 first line, the cost of the financing contribution.
21 I just wanted to clarify that it's not -- it
22 doesn't represent the actual cost that Com Ed

1 incurred in 2005, it represents costs associated
2 with hypothetical alternatives that we've
3 presented.

4 Q. Right.

5 A. Okay, I just wanted to clarify that.

6 Q. Okay. So going back to my question, the
7 pension contribution was financed in March of 2005;
8 is that correct?

9 A. Correct.

10 Q. And then referencing that pension
11 contribution that was financed in March 2005, the
12 full annual financing cost was not incurred in
13 2005; is that correct?

14 A. There would not be 12 months incurred in in
15 2005.

16 Q. Thank you. And in fact only a little over
17 9 months of the financing cost was incurred in
18 2005; is that correct?

19 A. That's correct.

20 MR. GARG: And with that, I have no further
21 questions. Thank you.

22 MR. FOSCO: And your Honor, I can just clear up,

1 we initially did have some questions, but given the
2 length of the time we spent this afternoon on
3 topics, we have no cross.

4 REDIRECT EXAMINATION

5 BY

6 MR. STAHL:

7 Q. I just have one question on Mr. Garg's
8 cross examination. Can you explain why it is that
9 it's appropriate to reflect a full year's costs
10 even though only 9 months costs were incurred in
11 2005?

12 A. Yes, I guess two things that I would note.
13 First, in a rate proceeding, generally all the
14 financing costs are determined based on an
15 annualization of costs, debt or equity costs
16 outstanding as of a point in time.

17 So I'm reflecting an annual cost
18 associated with the pension financing is consistent
19 with the annualization of financing costs
20 associated with all other rate base items, as well.
21 And then secondly, the pension -- the full effect
22 of the pension contribution expense will not be

1 realized until 2006, and at that time a large
2 number of other items will affect pension expense
3 as well.

4 So the reality is that pension expense
5 did not go down lower in 2006 than it was in 2005,
6 it actually increased over 2005 levels, because of
7 all the reasons offset the affect of a full year's
8 affect of the pension contribution and pension
9 expense.

10 MR. STAHL: Thank you, we have nothing further.

11 MR. GARG: I don't have anything.

12 JUDGE DOLAN: Thank you Ms. Houtsma.

13 All right, then, Mr. Hill. Are you
14 ready?

15 MR. STAHL: Just a point of clarification. I was
16 a little surprised, I guess, that staff had no
17 examination of Ms. Houtsma, especially on
18 Exhibit 52.1, that Column N. We're trying to get a
19 full and complete record for the Commission on
20 these matters, especially relating to A and G.

21 Ms. Houtsma is here, she can explain
22 that column, she can explain where that information

1 is in the record. If anybody is interested in
2 hearing that, we're willing to present her for that
3 limited purpose this afternoon. We thought it
4 might come up during cross by staff, they had
5 reserved time, obviously we're not doing it. I
6 don't want to insist on it if nobody is interested,
7 but all I'm saying is she's here, she's the
8 witness, she can provide that information. It
9 probably wouldn't take very long, but I'll leave it
10 up to the parties and the judges.

11 MR. FOSCO: Well, I think he's misinterpreting
12 what Mr. Lazare said. I mean, you know, they made
13 their case, we operated under very tight time
14 frames on the Company's request and we didn't get
15 rebuttal, we're where we are, the record is what
16 the record is.

17 MR. STAHL: As I say, I'm not insisting on it,
18 but I'm saying if someone is here and is really
19 interested in knowing what it is, it can be
20 provided.

21 MR. FOSCO: For what it's worth, that's not --
22 the numbers in the column it's, the lack of

1 explanation of the changes to get to the totals,
2 but we're not here to argue the case, I think we're
3 here for cross and that's not going to come out.

4 JUDGE DOLAN: Thank you for the offer.

5 MR. BERNET: Com Ed calls as its next witness
6 Jerome P. Hill.

7 (Witness previously sworn.)

8 (Whereupon, Com Ed
9 Exhibits Nos. 53 and 60 were
10 marked for identification
11 as of this date on e-docket.)

12 JEROME P. HILL,
13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY

17 MR. BERNET:

18 Q. Mr. Hill, can you state your name and spell
19 it for the record?

20 A. Jerome Hill, J-e-r-o-m-e, H-i-l-l.

21 Q. Mr. Hill, you have in front of you what's
22 been previously marked as Com Ed Exhibit 53. Do

1 you recognize that document?

2 **A.** I do.

3 **Q.** And is that the direct testimony on

4 rehearing that you prepared?

5 **A.** It is.

6 **Q.** And do you have any corrections to that

7 testimony?

8 **A.** No.

9 **Q.** If I were to ask you the questions that are

10 set forth in that testimony would your answers be

11 the same today?

12 **A.** They would.

13 **Q.** I would next direct your attention to

14 what's been previously marked as Com Ed Exhibit 60.

15 Do you have that?

16 **A.** I do.

17 **Q.** And is that the rebuttal testimony on

18 rehearing that you prepared in connection with this

19 docket?

20 **A.** It is.

21 **Q.** And do you have any corrections or

22 modifications to that testimony?

1 **A.** No.

2 **Q.** And if I were to ask you the questions set
3 forth in that document, would your answers be the
4 same?

5 **A.** They would.

6 MR. BERNET: And with that I move for the
7 admission of Com Ed Exhibits 53 and 60 and tender
8 Mr. Hill for cross examination.

9 JUDGE DOLAN: Anything objections?

10 MR. GARG: No objections.

11 JUDGE DOLAN: Com Ed Exhibit 53 and Com Ed
12 Exhibit 60 will be admitted into the record.

13 (Whereupon, Com Ed
14 Exhibits Nos. 53 and 60 were
15 admitted into evidence as
16 of this date.)

17 MR. GARG: Thank you, your Honor.

18 MR. BERNET: Your Honor, I have one correction.
19 Attached to Com Ed Exhibit 53 is an attachment,
20 it's Schedule C4, Page 4 of 4. Just so the record
21 is clear that's also part of what we're offering to
22 admit as part of the Exhibit 53.

1 JUDGE DOLAN: Okay. Any objections to that?

2 MR. GARG: No.

3 JUDGE DOLAN: All right, then, as part of
4 Exhibit 53, Schedule C4 will be also admitted into
5 the record.

6 MR. REDDICK: I missed the description of the
7 document.

8 MR. BERNET: It's Page 4 of 4 of Schedule C4.
9 It's the electric operation and maintenance
10 expenses for the years 2001 to 2004.

11 MR. REDDICK: That's C4 of the filing?

12 MR. BERNET: Yes.

13 JUDGE DOLAN: Schedule C4. It was part of his
14 original testimony, it was attached to it.

15 CROSS EXAMINATION

16 BY

17 MR. GARG:

18 Q. Mr. Hill, my name is Rishi Garg and I work
19 for the Attorney General's Office. How are you?

20 A. Good.

21 Q. Can you refer to your rebuttal testimony on
22 rehearing at Page 19?

1 **A.** I have it.

2 **Q.** On that page are you providing testimony
3 generally referring to the Exelon way severance
4 expenses?

5 **A.** I think I'm responding to Mr. Effron's
6 rehearing direct on that, yes.

7 **Q.** On the Exelon way severance expenses,
8 correct?

9 **A.** Yes.

10 **Q.** At Lines 409 to 411 you state, quote, the A
11 G argued for no recovery of these costs, saying
12 that these savings would not be reflected in rates,
13 end quote. Is that correct?

14 **A.** That's what I state, yes.

15 **Q.** Did Mr. Effron actually say that the
16 savings from the severance program, quote, would
17 not be reflected in rates, in quoting your
18 testimony?

19 **A.** Well, I don't quote him, so I can't say
20 that he specifically had that in any line. I
21 believe from the various testimonies and the
22 summary of the order itself, I think that would

1 certainly lead and certainly led me to that
2 conclusion.

3 Q. Well, I'm not asking you what the
4 Commission order found, I'm asking you if anywhere
5 in Mr. Effron's testimony from his direct to his
6 rebuttal, if he ever, actually, said that the
7 savings from the severance program would not be
8 reflected in rates?

9 A. I have no reason to believe I would say
10 this without having some knowledge of that, so on
11 some of my review somewhere I must have seen
12 something like that.

13 Q. Can you point to that, point to where he
14 said that?

15 A. I don't have all those documents here now.
16 Again, I'll tell you the it was the reflection of
17 his testimony, the cross examination and the
18 synopsis in the order of the AG's position on the
19 subject that led me to this conclusion.

20 Q. But again I'm not asking you about anything
21 that is said in the Commission order. I'm asking
22 you about Mr. Effron's testimony and you're saying

1 you cannot point to anywhere in his testimony where
2 Mr. Effron says what you attribute to him saying?

3 **A.** I can't recall. All I know is as I got it
4 from somewhere it may have been from an order, but
5 that's where I got it. Hold on one second. I'm
6 sorry, I'm rereading Mr. Effron's Q and A on this.

7 **Q.** I'm sorry, what are you reading there?

8 **A.** I'm rereading Mr. Effron's direct testimony
9 on rehearing, the question and answer on Page 7,
10 hold on one second. Mr. Effron claims he made no
11 such allegation, I'll let his testimony stand as
12 what he said.

13 **Q.** And based on your familiarity with this
14 case, did the Attorney General say anywhere in any
15 of its briefs that the savings from the severance
16 program would not be reflected in rates?

17 **A.** I have have no recollection of that.

18 **Q.** Of the AG saying that?

19 **A.** Um-hmm.

20 MR. GARG: Thank you, very much, Mr. Hill, no
21 further questions.

22 CROSS EXAMINATION

1 BY

2 MR. TOWNSEND:

3 Q. Good afternoon, Mr. Hill.

4 A. Good afternoon.

5 JUDGE DOLAN: Hold on, Mr. Townsend. Do you have

6 any redirect before we?

7 MR. BERNET: No redirect.

8 MR. TOWNSEND: My apologies, your Honor, just

9 anxious.

10 BY MR. TOWNSEND:

11 Q. Chris Townsend appearing on behalf of the

12 Coalition of Energy Suppliers. Good afternoon,

13 Mr. Hill.

14 A. Good afternoon.

15 Q. What does the term general and intangible

16 plant mean?

17 A. It means in the context of the uniform

18 system of accounts that regulated utilities operate

19 under, it generally refers to a plant that has,

20 generally speaking, a more common use, is not

21 specifically dedicated to any of the other FERC

22 functional categories of operations for utility

1 which would be production, transmission,
2 distribution and customer.

3 **Q.** Would you agree that the costs and expenses
4 associated with Com Ed's transmission function
5 should be recovered from customers who take
6 transmission services from Com Ed?

7 **A.** Those expenses specifically recorded in
8 transmission expenses and transmission plant, yes.

9 **Q.** And would you agree that costs and expenses
10 associated with Com Ed's distribution function
11 should be recovered from customers who take
12 distribution system from Com Ed?

13 **A.** I would expand that to, it's delivery
14 services and it's distribution and customer
15 functions, so if you expand it to distribution and
16 customer, yes, I would do that.

17 **Q.** Would you agree that the costs and expenses
18 associated with Com Ed's supply function should be
19 recovered from customers who take supply service
20 from Com Ed?

21 **A.** That would follow, yes.

22 **Q.** You're familiar with the assumptions behind

1 Com Ed's assigning costs to different types of
2 customers in this proceeding, right?

3 **A.** I'm not Company's cost of service witness,
4 which essentially takes costs and functionalizes it
5 into various components to determine individual
6 rates, but I have done, as part of my work, the
7 functionalization of general and intangible plant
8 as well as A and G expenses.

9 **Q.** So you are generally familiar with the
10 assumptions regarding functionalization, correct?

11 **A.** General and intangible plant and A and G,
12 yes.

13 **Q.** And you are familiar with the Commission's
14 final order in this proceeding, regarding
15 functionalization?

16 **A.** I'm not sure specifically what you are
17 referring to, but I would say as a general matter,
18 yes.

19 **Q.** Well, specifically with regards to those
20 issues that you testified about.

21 **A.** General and intangible plant and A and G,
22 very familiar.

1 **Q.** Com Ed's position in the initial phase of
2 this proceeding was that it was appropriate to
3 assign procurement proceeding costs to delivery
4 services customers, correct?

5 **A.** There were certain costs incurred in Com
6 Ed's test year that were determined that they would
7 become supply related costs that would be removed
8 from the general delivery service tariff and
9 collected under the supply administration charge.

10 **Q.** I think you jumped the gun there a little
11 bit. The question was, in Com Ed's original
12 testimony in this case, not in the Commission's
13 order. So in Com Ed's original testimony, the
14 costs associated with the procurement proceeding
15 were assigned to the delivery services function,
16 correct?

17 **A.** I'm sorry, I misunderstood you. The cost
18 specific to the procurement, the docketed
19 procurement case, yes, they were initially
20 requested to be recovered through the delivery
21 service tariff, yes.

22 **Q.** And it was Com Ed's position in the initial

1 phase of this proceeding, that it was appropriate
2 to assign the procurement proceeding costs to all
3 delivery services customers because all delivery
4 services customers are eligible to take service
5 under a BES tariff, correct?

6 **A.** I believe that was testified by Paul
7 Crumrine, if memory serves me right, but I have
8 that general recollection, yes.

9 **Q.** And the Commission in its final order, and
10 I think this is what you were alluding to earlier,
11 the Commission in its final order in this
12 proceeding, concluded that it was improper for Com
13 Ed to assign the procurement proceeding costs to
14 delivery services customers, correct?

15 **A.** That was their decision in the July order,
16 yes.

17 **Q.** So all of the regulatory and legal fees
18 associated with the procurement proceeding now are
19 to be collected from Com Ed's supply customers,
20 right?

21 **A.** That's my understanding.

22 **Q.** And those costs are now to be recovered via

1 the Company's supply administration charge, right?

2 A. That's also my understanding.

3 Q. So that would have required an upward
4 adjustment to Com Ed's supply administration
5 charge, correct?

6 A. All other things equal, just the decision
7 by the Commission to move recovery of that from
8 delivery service tariffs to procurement would have
9 that effect, yes.

10 Q. And could you turn in your rebuttal
11 testimony on rehearing to Page 20, Lines 452 to 53.
12 Let me know when you're there.

13 A. I'm there.

14 Q. And there you testify that Com Ed has shown
15 that it removed from its proposed revenue
16 requirements the costs properly to be recovered
17 through its supply administration charge, correct?

18 A. Yes. Referring to our initial filing, yes.

19 Q. And you cite to the testimony from the
20 initial phase, right?

21 A. I do.

22 Q. And that initial phase testimony, I think

1 we just established, contained an assumption that
2 was rejected by the Commission, the assumption that
3 the costs were properly allocator, based upon
4 eligibility, right?

5 **A.** I'm not sure if that's exactly the question
6 I answered. I think I answered that the Commission
7 decided that the dock -- the cost from the
8 docketed procurement proceeding would now be
9 recovered under the SAC, supply administration
10 charge. And my recollection is that there was no
11 adjustment to the revenue requirement for those
12 other costs that we proposed to be moved over from
13 recovery of delivery services to supply
14 administration charge. So I'm not sure if that was
15 your question, but that's my understanding of how
16 this all shaped out.

17 **Q.** It wasn't my question, but we can give it
18 another shot. The initial phase testimony
19 contained an assumption that the costs were
20 properly allocator based upon eligibility for the
21 BES rates, correct?

22 **A.** That goes beyond what my testimony was. I

1 believe Paul Crumrine testified to that.

2 Q. That's right, you recalled that, that Paul
3 Crumrine did testify with regards to that
4 assumption, right?

5 A. That certain costs will now be recovered
6 under the supply administration charge, yes.

7 Q. Actually Paul Crumrine had testified that
8 costs should be allocator based upon eligibility,
9 right?

10 MR. BERNET: I'm going to object, I think we're
11 talking about another witness' testimony in other
12 phase of the case. Mr. Hill didn't testify about
13 that.

14 JUDGE DOLAN: That's sustained.

15 MR. TOWNSEND: Your Honor, actually, again, he
16 refers back to that testimony in the first phase
17 here as to justify why there is not a change in the
18 SAC.

19 JUDGE DOLAN: What line are you talking about,
20 Counsel?

21 MR. TOWNSEND: 452 to 453 and so right after,
22 that 457. The citation there is to the testimony

1 in the initial phase and he is testifying about
2 other people's testimony.

3 MR. BERNET: But he's not testifying about the
4 assumption made.

5 JUDGE DOLAN: But on this one, though, when you
6 talk about Crumrine, he's talking about the
7 rebuttal testimony on rehearing of Mr. Crumrine.
8 But you're talking about the -- he didn't mention
9 that testimony. You asked him about Mr. Crumrine's
10 testimony.

11 MR. TOWNSEND: All of that testimony in the
12 initial phase was based upon, in part, and we could
13 walk through the various pieces of testimony in
14 order to get back to Mr. Crumrine's testimony, but
15 he is testifying here that he thinks that the
16 numbers in the original filing, so in the initial
17 phase of this case, included proper adjustments to
18 the SAC.

19 And what I was trying to explore was
20 whether there was an assumption that was included
21 in those original numbers that the allocation is
22 appropriate based on eligibility and that

1 assumption had been undermined by the Commission's
2 order. The Commission rejected that assumption and
3 said that you shouldn't base costs on eligibility,
4 but instead should use cost causation principles.

5 MR. BERNET: Again, it's beyond the scope of this
6 witness' testimony. He is referring back to prior
7 case testimony with respect to what was in the
8 supply administration charges. He's not discussing
9 the assumptions underlying that.

10 JUDGE DOLAN: We are still going to sustain the
11 objection.

12 BY MR. TOWNSEND:

13 Q. Do you know the assumptions that went into
14 the calculation of original supply administration
15 charge?

16 A. I know what we removed, based on the
17 analysis done by Paul Crumrine in his support of
18 the supply administration charge.

19 Q. When you say you removed, what do you mean?

20 A. I believe the initial filing, it's a work
21 paper now, I think I have it somewhere in my
22 testimony, WPC-1A, there is a removal from the

1 company's total A and G costs, a line item that
2 shows the removal of costs expected to be recovered
3 under a supply administration charge.

4 Q. So has Com Ed recalculated the amount that
5 it's going to be charging under the supply
6 administration charge to remove -- I'm sorry, to
7 add in the procurement proceeding costs?

8 A. I have no knowledge of that, that would be
9 Mr. Crumrine.

10 Q. So you don't know whether or not the
11 Company's current position with regards to the
12 supply administration charge is that it should be
13 at the same level or higher or lower than it was
14 prior to the Commission issuing its final order?

15 A. That's an individual rate tariff
16 construction and I'm the total revenue requirements
17 witness.

18 Q. So you don't know whether or not Com Ed has
19 properly removed from its proposed revenue
20 requirement, all of the costs properly to be
21 recovered through the supply administration charge?

22 A. No, we have. We have -- this is from the

1 initial filing. The only change that I'm aware of
2 is that from the order which takes the docketed
3 procurement proceeding and the costs related to
4 that and moves it out of the delivery service
5 tariff revenue requirement and under the recovery
6 or revenue requirement, if you will, of the supply
7 administration charge.

8 Q. And do you know whether or not any costs,
9 any additional costs, in the initial phase of the
10 proceeding were assigned based upon the eligibility
11 theory?

12 A. No.

13 Q. Going forward, Com Ed is going to continue
14 to procure power for its supply customers, correct?

15 A. I believe so, yes.

16 Q. So going forward Com Ed will continue to
17 incur procurement related costs, correct?

18 A. I imagine so, yes.

19 Q. And those costs go beyond regulatory and
20 legal costs and include day-to-day procurement
21 costs, correct?

22 A. I would expect that to be the case, yes.

1 **Q.** And it would be appropriate for Com Ed to
2 recover all procurement related costs from
3 customers who take supply service from Com Ed,
4 correct?

5 **A.** Well, we certainly would want to recover
6 all of our costs from the supply customers, that
7 makes some sense to me.

8 **Q.** Well, those customers who only take
9 delivery services from Com Ed should only pay for
10 the delivery services costs, correct?

11 **A.** Yeah, properly allocator, yes.

12 **Q.** And you have office buildings that
13 procurement staff use, correct?

14 **A.** We don't have any office buildings used
15 exclusively for procurement staff. Do they occupy
16 a few cubicles in Com Ed offices, I believe they
17 probably do.

18 **Q.** And they use computer equipment as part of
19 their procurement function?

20 **A.** All four of them in 2004 used computer
21 equipment, yes.

22 **Q.** Well, actually it should be more than four

1 now, right?

2 **A.** Well, 2004 is the test year. When we
3 removed from the test year, from the delivery
4 service revenue requirement can only be in the test
5 year for the procurement activity. You can't take
6 out more than what's there.

7 **Q.** Well, you had procurement proceeding costs
8 there, right?

9 **A.** Right. We initially requested them through
10 delivery service, that's correct.

11 **Q.** And so there were people involved with that
12 procurement proceeding, right?

13 **A.** The costs of that proceeding are in the
14 costs of that proceeding. That was moved by the
15 Commission out of delivery services tariffs and
16 into the SAC.

17 **Q.** But there were people involved with the
18 procurement proceeding, right?

19 **A.** Absolutely, there is people involved, they
20 are included in the cost of the procurement case
21 pro forma expense that was in the initial filing.

22 **Q.** So there were more than four people that

1 are properly viewed as being procurement people now
2 underneath that definition, right?

3 **A.** Well, for that initial proceeding, yes. If
4 you're going to tell me is there going to be one of
5 those every year at that level, I would probably
6 disagree strongly with that.

7 **Q.** Well, there are going to be ongoing
8 investigations into the appropriate methodology to
9 be used for procurement, correct?

10 **A.** But none of those were in the 2004 test
11 year, that is a going forward expense.

12 **Q.** But going back to the 2004 test year, there
13 were people who were involved in the procurement
14 proceeding, right?

15 **A.** Four of them.

16 **Q.** There were more than four involved in the
17 procurement proceeding, as I recall --

18 **A.** I believe our energy acquisition
19 department, which is our power procurement
20 activities for Com Ed, consists of four individuals
21 in the year 2004.

22 **Q.** With regards to the procurement proceeding,

1 though, you had legal folks who were involved with
2 that, right?

3 **A.** Yes. And their costs are in the
4 procurement case expense. That is were a pro forma
5 adjustment that were moved from the delivery
6 service tariffs to the SAC by a Commission order.

7 **Q.** And those legal people used computer
8 equipment, correct?

9 **A.** I'm sure they did, but especially for all
10 of those folks who are external attorneys,
11 obviously those are not Com Ed equipment and to the
12 extent that legal folks internally use any
13 equipment, I believe they charge, in fact they do
14 charge the procurement case docket cost. So they
15 would be included in that amount that was shown as
16 the pro forma adjustment.

17 **Q.** What about the office building space for
18 those legal and regulatory people?

19 **A.** In our general and intangible plant study,
20 they would have been allocator -- or they would
21 have been assigned, I should say, under the study
22 that was performed and included with my initial

1 testimony.

2 Q. And would they have been included as
3 delivery services people?

4 A. The general and intangible plant is
5 directly assigned on the basis that we assigned it.
6 I don't know if -- I can't remember now for office
7 space exactly what basis we use on that. I would
8 have to go back and look, but for the period of
9 time that they may have worked on procurement case
10 or the period of time they worked on anything else,
11 their costs would have been directly assigned in
12 our study.

13 Q. And at the beginning of this whole case,
14 again, you were saying that anyone involved with
15 the procurement case should be assigned to the
16 delivery services side, right?

17 A. I did.

18 Q. And that assumption was rejected by the
19 Commission, right?

20 A. I'm not sure I understand what your
21 question is. I don't think -- I don't recall
22 seeing the order on specifically general or

1 intangible plant rejecting our study or the way we
2 conducted our study.

3 Q. With regards to the procurement case it
4 rejected your study, right?

5 A. Let's talk about the procurement. The
6 procurement case you are talking about is the
7 docketed proceeding that lasts 4 months, 5 months,
8 whatever the number was, 6 months, is that the
9 procurement case you are referring to?

10 Q. I would have thought that it was a lot
11 longer period of time for folks inside Com Ed to be
12 dealing with the procurement proceeding. But,
13 yeah, I'm talking about the procurement proceeding
14 the one that is up on appeal now and there is a
15 whole lot of discussion about, that's the one?

16 A. I'm sorry, I lost the question, somewhere.
17 Could you repeat the question?

18 Q. Sure. Just to kind of cut to the chase
19 here, originally you guys -- I'm sorry, Com Ed
20 took the costs associated with the procurement
21 proceeding and put them into the delivery services
22 bucket, right?

1 **A.** Yep, we specifically identified them,
2 requested recovery of those costs through delivery
3 service proceeding, correct.

4 **Q.** And the Commission said that that was
5 inappropriate, right?

6 **A.** They indicated that that should be
7 recovered through the supply administration charge.

8 **Q.** And has that now been reassigned to the
9 supply administration charge?

10 **A.** Reassigned in charging the proposed tariff
11 that would result from that revenue requirement,
12 you'll have to ask Paul Crumrine, I don't know.

13 **Q.** But if it hasn't been it should have been
14 or it will be?

15 **A.** Well, if Com Ed is to get cost recovery
16 and it's not delivery services, the only way we'll
17 get it is through the supply administration charge.

18 **Q.** And the people associated with that
19 procurement proceeding originally were assigned to
20 the delivery services function, correct?

21 MR. BERNET: I'm going to object believe we've
22 been over this several times he asked the same

1 question two or three times already, asked and
2 answered.

3 MR. TOWNSEND: I'm sure it was probably asked,
4 I'm not sure it was answered.

5 JUDGE DOLAN: Why don't you rephrase it then.

6 BY MR. TOWNSEND:

7 Q. Com Ed owns land that its staff uses,
8 correct?

9 A. It owns property that its staff uses, yes.

10 Q. And part of that property is allocated to
11 delivery services, correct?

12 A. Delivery services and transmission
13 services, correct.

14 Q. And you assign that based upon who is using
15 that property, correct?

16 A. We assign all the plant functions in
17 general and intangible plant different, that's what
18 direct assignment is. You don't use one allocator,
19 so no, not necessarily, all property is assigned by
20 the people that are using it.

21 Q. To the extent that you have a supply
22 service person using property, should that property

1 be assigned to the supply function?

2 **A.** I guess I would generally say if it's
3 sufficient enough to cause any allocation of plant,
4 as far as, for example, if Com Ed in half of its
5 staff was working on supply related activities,
6 then obviously there should be something, four
7 people, not so sure.

8 **Q.** How many people were working on the
9 procurement case?

10 **A.** I wouldn't have any idea of exactly how
11 many, for example, full time equivalents that were
12 Com Ed people, not talking about experts or what
13 have you.

14 **Q.** How many Com Ed people were charged with
15 explaining the procurement case to the general
16 public or the president?

17 **A.** I have no idea.

18 **Q.** But there was somebody inside Com Ed who
19 was charged with doing that?

20 **A.** There may have been, I don't have personal
21 knowledge of how many people would be doing that,
22 no.

1 **Q.** Would you agree that to the extent that the
2 Commission finds that Com Ed has incurred general
3 and intangible cost that is related to the supply
4 function, that Com Ed should be allowed an
5 opportunity to recover those costs from customers
6 who take supply service from Com Ed?

7 **A.** I suppose not knowing the groundrules or
8 guidelines that would be applied it would be tough
9 for me to accept that as a general statement.
10 However, to the extent that it is shown that there
11 are costs for activities that are supply related,
12 and they are material enough to cause some kind of
13 allocation, I guess my answer would be I would
14 think so.

15 **Q.** And more broadly, would you agree that to
16 the extent Com Ed prudently incurs costs related to
17 supply, that Com Ed should be allowed to recover
18 these costs from the customers who take supply
19 service from Com Ed?

20 **A.** I'd be more comfortable in Paul Crumrine
21 answering that. I would think, I would think that
22 that makes some sense.

1 **Q.** Com Ed's direct assignment methodology
2 merely allocated the costs between transmission and
3 distribution, right?

4 **A.** No, we -- for example, there were a couple
5 items that we did labor allocators for and I
6 believe the four people in the procurement area
7 were part of the labor allocator factor and I
8 believe they were below .01 percent.

9 **Q.** But with regards to the bulk of the
10 generation transfer, you took as a given the
11 transfer that Com Ed made in the proceeding in
12 which it transferred its generation units to
13 ex-gen, correct?

14 **A.** I'm not sure I follow that exactly. I
15 mean, seriously, could you just reword that?

16 **Q.** For the purposes of the generation
17 allocation, you took as a starting point the
18 allocation that Com Ed had performed as a part of
19 the docketed proceeding where it transferred its
20 generation to ex-gen, correct?

21 **A.** Are we talking general and intangible
22 plant?

1 **Q.** Yes.

2 **A.** As I think I've testified, many, many, many
3 times, we no longer have any general and intangible
4 plant that is used by -- for production.

5 **Q.** I was just trying to get to your starting
6 point for the functionalization of costs?

7 **A.** The starting point is the Com Ed's general
8 and intangible plant balances at the end of 2004.

9 **Q.** Which were based upon the figures included
10 in the case in which Com Ed transferred its
11 generation units to ex-gen, as opposed to being
12 based on the Commission's file order in Docket
13 01-0423, correct?

14 **A.** The starting point isn't really based on
15 anything. What it has occurred after the transfer
16 of assets for the divestiture that occurred in
17 2001. And it is based on the audited original
18 costs amount of all general and intangible plant
19 that are in accordance with FERC uniformed system
20 of accounts and audited by independent accountants,
21 in our case, Price Waterhouse Coopers.

22 **Q.** So is the Commission's decision with

1 regards to the plant transfer to ex-gen at all
2 relevant to your assignment of general and
3 intangible plant?

4 **A.** The transfer means it is gone. So if the
5 starting point is 2004 and it's not there, there is
6 no consideration need to be given to it.

7 **Q.** And the reason that it wasn't there was
8 because of the transfer that occurred within that
9 docket?

10 **A.** I'm only confused a bit by that docket.

11 **Q.** In the transfer to ex-gen docket, do you
12 need the docket number?

13 **A.** There were a couple of them, I believe, in
14 '03, but, yes, those dockets removed the transfer
15 of previous Com Ed general plant, I'm not sure if
16 there is any intangible or not, but if there was it
17 would have been in that docket as well, general and
18 intangible plant to the generation plants in those
19 two dockets and there was a notice of transfer
20 given to the Commission for the general and
21 intangible plant assets transfer to the business
22 service companies. And they all occurred in

1 generally about the same time.

2 Q. And those were transfers under Section 1611
3 G of the Act?

4 A. I'm not a lawyer, but I believe that's
5 right.

6 Q. Well, they weren't rate cases, right?

7 A. That's correct.

8 Q. And was there a Commission finding
9 regarding the appropriate amount of G and I plant?

10 A. I believe the two docketed proceedings did
11 have orders. The notice -- notice was essentially
12 information to the Commission for which my
13 understanding is we received inquiries about, but
14 Commission took or didn't deliver a decision as we
15 would, you know, expect in our rate proceeding.

16 Q. And in that order, do you know whether or
17 not the Commission explicitly addressed the
18 appropriate amount of G and I plant to be
19 transferred?

20 A. I believe that would be true in the dockets
21 that related to the transfer to the nuclear
22 affiliate ex-gen.

1 **Q.** So you believe in Dockets 00-0369 and
2 00-0394, that the issue of general and intangible
3 plant was addressed explicitly by the Commission?

4 **A.** I don't recall the orders right off the top
5 of my head, but it was an order -- it was a
6 docketed proceeding to talk about the transfer of
7 assets. My recollection is that they did approve
8 those amounts.

9 **Q.** But sitting here you don't know for sure?

10 **A.** It's easy enough to find out mbut as I sit
11 here right now, I don't recall.

12 MR. TOWNSEND: No further questions.

13 JUDGE DOLAN: Any redirect.

14 MR. BERNET: Can I have a moment?

15 REDIRECT EXAMINATION

16 BY

17 MR. BERNET:

18 **Q.** Just a couple of questions. Mr. Hill, you
19 recall that Mr. Garg asked you questions about Line
20 409 through 411 of your rebuttal testimony on the
21 rehearing. Do you recall that?

22 **A.** I do.

1 **Q.** And in that testimony you refer to savings
2 that would not be reflected in rates, do you recall
3 that?

4 **A.** I do.

5 **Q.** And over what period are those savings that
6 you're referring to in that sentence?

7 **A.** 2004, 2005 and 2006. That's what these
8 refer to in line 410 as a response to Mr. Effron's
9 testimony when he's talking about savings for those
10 years and that's perhaps not the best English to
11 use in that sense tense, but that's what these
12 reference to.

13 **MR. GARG:** Counsel already mentioned that they
14 had no redirect on -- I'm just informing the
15 court --

16 **MR. BERNET:** It is just one point of
17 clarification.

18 **MR. GARG:** If you're going to allow it.

19 **JUDGE DOLAN:** He is right about that, but I'd say
20 for what it's worth.

21 **MR. BERNET:** Thank you, no further questions.

22 **JUDGE DOLAN:** That's all the questions you have?

1 MR. BERNET: Yeah.

2 JUDGE DOLAN: Any recross based on that?

3 MR. GARG: I don't have any recross based on
4 that.

5 JUDGE DOLAN: Mr. Stahl, are you going to put
6 this Com Ed Cross Exhibit No. 1 into evidence?

7 MR. STAHL: Yes, we would move admission into
8 evidence of Com Ed Rehearing Cross Exhibit No. 1.

9 MR. FOSCO: And your Honor, we would object to
10 the admission of that exhibit. It was used to
11 refresh Mr. Lazare's recollection. Mr. Lazare
12 didn't disagree with anything that was asked about.
13 I don't think it's proper, it's not Mr. Lazare's
14 document, so I do object to admission.

15 MR. STAHL: It wasn't used to refresh his
16 recollection at all, it was used as substantive
17 evidence to get numbers in the record to show
18 adjustments --

19 MR. FOSCO: There is no foundation. Mr. Lazare
20 can't testify to any of the numbers in there and he
21 kept on constantly answering the questions that's
22 what those documents said, but there is no

1 foundation to --

2 MR. STAHL: Mr. Lazare was provided that
3 information along with the filing in this case, he
4 has had it for ample time. We could certainly
5 provide -- I can't imagine there is any question
6 as to the foundation for those numbers, a lot of
7 those numbers are the same as reflected in 52.1 and
8 52.9. This is a work paper we're relying on.

9 MR. FOSCO: It's not Mr. Lazare's work paper and
10 we don't think they established a foundation for
11 admission, it wasn't contexted, it doesn't impeach.
12 They asked questions, it refreshed his
13 recollection, notwithstanding what Mr. Stahl says,
14 but that's all it was.

15 MR. STAHL: It wasn't intended to impeach. I
16 asked Mr. Lazare if those looked like adjustment in
17 the order of magnitude that were made and he agreed
18 in every instance, yes, those were adjustments that
19 had been made to the FERC Form 1. He didn't
20 express any doubts about what those numbers were or
21 where they were or what they represented or
22 anything else.

1 MR. FOSCO: And all the answers to the questions
2 are already in the record, there is no basis.

3 JUDGE DOLAN: To clarify the record, if someone
4 is to look at the record, and try to determine what
5 questions were asked, we're going to allow this
6 document into the record.

7 (Whereupon, Com Ed Cross
8 Exhibit No. 1 was
9 admitted into evidence as
10 of this date.)

11 MR. STAHL: Notwithstanding you --

12 JUDGE DOLAN: And with that, we will be entered
13 and continued to tomorrow at 9:30 a.m.

14 (Whereupon the above-entitled
15 matter was continued to November
16 3rd, 2006 at 9:30 a.m.)

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